United Nations A/64/490

General Assembly

Distr.: General
29 October 2009

Original: English

Sixty-fourth session
Agenda item 64
Report of the Human Rights Council

Report of the Independent International Fact-Finding Mission

Note by the President of the General Assembly

1. In its decision 64/507 of 28 October 2009, the General Assembly decided to consider the report of the Human Rights Council on its twelfth special session (A/64/53/Add.1) directly in plenary meeting.

2. In its resolution S/12/1, contained in the above-mentioned report, the Human Rights Council recommended that the General Assembly consider the report of the Independent International Fact-Finding Mission during the main part of its sixty-fourth session.

3. The President of the sixty-fourth session of the General Assembly has the honour to transmit to Member States the report of the Independent Mission (see annex).

Please recycle

Annex

Report of the United Nations Fact-Finding Mission on the Gaza Conflict*

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* English only: to be issued as A/HRC/12/48.

Report of the United Nations Fact-Finding Mission on the Gaza Conflict

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ACRONYMS AND ABBREVIATIONS

ACRI	Association for Civil Rights in Israel
BMC	businessman card
CLA	Coordination and Liaison Administration
CMWU	Coastal Municipalities Water Utility
COGAT	Coordinator of Government Activities in the Territories
DFLP	Democratic Front for the Liberation of Palestine
DIME	dense inert metal explosive
DSS	United Nations Department of Safety and Security
FAO	Food and Agriculture Organization of the United Nations
GIS	General Intelligence Service
HaMoked	Center for the Defense of the Individual
HCC	Humanitarian Coordination Centre
IAF	Israeli air force
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHR	Independent Commission for Human Rights
ICRC	International Committee of the Red Cross
IDF	Israeli Defense Forces
IED	improvised explosive device
IHL	international humanitarian law
IHRL	international human rights law
ILO	International Labour Organization
IOF	Israeli occupation forces
MADA	Palestinian Center for Development and Media Freedoms
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
PALTRADE	Palestine Trade Center
PCATI	Public Committee against Torture in Israel
PCHR	Palestinian Centre for Human Rights
PFLP	Popular Front for the Liberation of Palestine
PHR-Israel	Physicians for Human Rights – Israel
PLO	Palestine Liberation Organization
PRC	Popular Resistance Committee
PRCS	Palestinian Red Crescent Society
TAWTHEQ	Central Commission for Documentation and Pursuit of Israeli War Criminals
UAV	unmanned aviation vehicle
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNITAR	United Nations Institute for Training and Research

UNOSAT	Operational Satellite Applications Programme
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
WFP	World Food Programme
WHO	World Health Organization

EXECUTIVE SUMMARY

A. Introduction

1. On 3 April 2009, the President of the Human Rights Council established the United Nations Fact Finding Mission on the Gaza Conflict with the mandate "to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after."

2. The President appointed Justice Richard Goldstone, former judge of the Constitutional Court of South Africa and former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, to head the Mission. The other three appointed members were: Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, who was a member of the high-level fact-finding mission to Beit Hanoun (2008); Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary-General on the situation of human rights defenders, who was a member of the International Commission of Inquiry on Darfur (2004); and Colonel Desmond Travers, a former Officer in Ireland's Defence Forces and member of the Board of Directors of the Institute for International Criminal Investigations.

3. As is usual practice, the Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the Mission.

4. The Mission interpreted the mandate as requiring it to place the civilian population of the region at the centre of its concerns regarding the violations of international law.

5. The Mission convened for the first time in Geneva between 4 and 8 May 2009. Additionally, the Mission met in Geneva on 20 May, on 4 and 5 July, and between 1 and 4 August 2009. The Mission conducted three field visits: two to the Gaza Strip between 30 May and 6 June, and between 25 June and 1 July 2009; and one visit to Amman on 2 and 3 July 2009. Several staff of the Mission's secretariat were deployed in Gaza from 22 May to 4 July 2009 to conduct field investigations.

6. Notes verbales were sent to all Member States of the United Nations and United Nations organs and bodies on 7 May 2009. On 8 June 2009, the Mission issued a call for submissions inviting all interested persons and organizations to submit relevant information and documentation to assist in the implementation of its mandate.

7. Public hearings were held in Gaza on 28 and 29 June and in Geneva on 6 and 7 July 2009.

8. The Mission repeatedly sought to obtain the cooperation of the Government of Israel. After numerous attempts had failed, the Mission sought and obtained the assistance of the Government of Egypt to enable it to enter the Gaza Strip through the Rafah crossing.

9. The Mission has enjoyed the support and cooperation of the Palestinian Authority and of the Permanent Observer Mission of Palestine to the United Nations. Due to the lack of cooperation from the Israeli Government, the Mission was unable to meet members of the

Palestinian Authority in the West Bank. The Mission did, however, meet officials of the Palestinian Authority, including a cabinet minister, in Amman. During its visits to the Gaza Strip, the Mission held meetings with senior members of the Gaza authorities and they extended their full cooperation and support to the Mission.

10. Subsequent to the public hearings in Geneva, the Mission was informed that a Palestinian participant, Mr. Muhammad Srour, had been detained by Israeli security forces when returning to the West Bank and became concerned that his detention may have been a consequence of his appearance before the Mission. The Mission is in contact with him and continues to monitor developments.

B. Methodology

11. To implement its mandate, the Mission determined that it was required to consider any actions by all parties that might have constituted violations of international human rights law or international humanitarian law. The mandate also required it to review related actions in the entire Occupied Palestinian Territory and Israel.

12. With regard to temporal scope, the Mission decided to focus primarily on events, actions or circumstances occurring since 19 June 2008, when a ceasefire was agreed between the Government of Israel and Hamas. The Mission has also taken into consideration matters occurring after the end of military operations that constitute continuing human rights and international humanitarian law violations related to or as a consequence of the military operations, up to 31 July 2009.

13. The Mission also analysed the historical context of the events that led to the military operations in Gaza between 27 December 2008 and 18 January 2009 and the links between these operations and overarching Israeli policies vis-à-vis the Occupied Palestinian Territory.

14. The Mission considered that the reference in its mandate to violations committed "in the context" of the December–January military operations required it to include restrictions on human rights and fundamental freedoms relating to Israel's strategies and actions in the context of its military operations.

15. The normative framework for the Mission has been general international law, the Charter of the United Nations, international humanitarian law, international human rights law and international criminal law.

16. This report does not purport to be exhaustive in documenting the very high number of relevant incidents that occurred in the period covered by the Mission's mandate. Nevertheless, the Mission considers that the report is illustrative of the main patterns of violations. In Gaza, the Mission investigated 36 incidents.

17. The Mission based its work on an independent and impartial analysis of compliance by the parties with their obligations under international human rights and humanitarian law in the context of the recent conflict in Gaza, and on international investigative standards developed by the United Nations.

18. The Mission adopted an inclusive approach to gathering information and seeking views. Information-gathering methods included: (a) the review of reports from different sources; (b) interviews with victims, witnesses and other persons having relevant information; (c) site visits to specific locations in Gaza where incidents had occurred; (d) the analysis of video and photographic images, including satellite imagery; (e) the review of medical reports about injuries to victims; (f) the forensic analysis of weapons and ammunition remnants collected at incident sites; (g) meetings with a variety of interlocutors; (h) invitations to provide information relating to the Mission's investigation requirements; (i) the wide circulation of a public call for written submissions; (j) public hearings in Gaza and in Geneva.

19. The Mission conducted 188 individual interviews. It reviewed more than 300 reports, submissions and other documentation either researched of its own motion, received in reply to its call for submissions and notes verbales or provided during meetings or otherwise, amounting to more than 10,000 pages, over 30 videos and 1,200 photographs.

20. By refusing to cooperate with the Mission, the Government of Israel prevented it from meeting Israeli Government officials, but also from travelling to Israel to meet Israeli victims and to the West Bank to meet Palestinian Authority representatives and Palestinian victims.

21. The Mission conducted field visits, including investigations of incident sites, in the Gaza Strip. This allowed the Mission to observe first-hand the situation on the ground, and speak to many witnesses and other relevant persons.

22. The purpose of the public hearings, which were broadcast live, was to enable victims, witnesses and experts from all sides to the conflict to speak directly to as many people as possible in the region as well as in the international community. The Mission gave priority to the participation of victims and people from the affected communities. The 38 public testimonies covered facts as well as legal and military matters. The Mission had initially intended to hold hearings in Gaza, Israel and the West Bank. However, denial of access to Israel and the West Bank resulted in the decision to hold hearings of participants from Israel and the West Bank in Geneva.

23. In establishing its findings, the Mission sought to rely primarily and whenever possible on information it gathered first-hand. Information produced by others, including reports, affidavits and media reports, was used primarily as corroboration.

24. The Mission's final conclusions on the reliability of the information received were based on its own assessment of the credibility and reliability of the witnesses it met, verifying the sources and the methodology used in the reports and documents produced by others, cross-referencing the relevant material and information, and assessing whether, in all the circumstances, there was sufficient credible and reliable information for the Mission to make a finding in fact.

25. On this basis, the Mission has, to the best of its ability, determined what facts have been established. In many cases it has found that acts entailing individual criminal responsibility have been committed. In all of these cases the Mission has found that there is sufficient information to establish the objective elements of the crimes in question. In almost all of the cases the Mission has also been able to determine whether or not it appears that the acts in question were done

deliberately or recklessly or in the knowledge that the consequence that resulted would result in the ordinary course of events. The Mission has thus referred in many cases to the relevant fault element (mens rea). The Mission fully appreciates the importance of the presumption of innocence: the findings in the report do not subvert the operation of that principle. The findings do not attempt to identify the individuals responsible for the commission of offences nor do they pretend to reach the standard of proof applicable in criminal trials.

26. In order to provide the parties concerned with an opportunity to submit additional relevant information and express their position and respond to allegations, the Mission also submitted comprehensive lists of questions to the Government of Israel, the Palestinian Authority and the Gaza authorities in advance of completing its analysis and findings. The Mission received replies from the Palestinian Authority and the Gaza authorities but not from Israel.

C. Facts investigated by the Mission, factual and legal findings

The Occupied Palestinian Territory: the Gaza Strip

1. The blockade

27. The Mission focused (chap. V) on the process of economic and political isolation imposed by Israel on the Gaza Strip, generally referred to as a blockade. The blockade comprises measures such as restrictions on the goods that can be imported into Gaza and the closure of border crossings for people, goods and services, sometimes for days, including cuts in the provision of fuel and electricity. Gaza's economy is further severely affected by the reduction of the fishing zone open to Palestinian fishermen and the establishment of a buffer zone along the border between Gaza and Israel, which reduces the land available for agriculture and industry. In addition to creating an emergency situation, the blockade has significantly weakened the capacities of the population and of the health, water and other public sectors to respond to the emergency created by the military operations.

28. The Mission holds the view that Israel continues to be duty-bound under the Fourth Geneva Convention and to the full extent of the means available to it to ensure the supply of foodstuff, medical and hospital items and other goods to meet the humanitarian needs of the population of the Gaza Strip without qualification.

2. Overview of Israel's military operations in the Gaza Strip and casualties

29. Israel deployed its navy, air force and army in the operation it codenamed "Operation Cast Lead". The military operations in the Gaza Strip included two main phases, the air phase and the air-land phase, and lasted from 27 December 2008 to 18 January 2009. The Israeli offensive began with a week-long air attack, from 27 December until 3 January 2009. The air force continued to play an important role in assisting and covering the ground forces from 3 January to 18 January 2009. The army was responsible for the ground invasion, which began on 3 January 2009, when ground troops entered Gaza from the north and the east. The available information indicates that the Golani, Givati and Paratrooper Brigades and five Armoured Corps Brigades were involved. The navy was used in part to shell the Gaza coast during the operations. Chapter VI also locates the incidents investigated by the Mission, described in chapters VII to XV, in the context of the military operations.

30. Statistics about Palestinians who lost their lives during the military operations vary. Based on extensive field research, non-governmental organizations place the overall number of persons killed between 1,387 and 1,417. The Gaza authorities report 1,444 fatalities. The Government of Israel provides a figure of 1,166. The data provided by non-governmental sources on the percentage of civilians among those killed are generally consistent and raise very serious concerns about the way Israel conducted the military operations in Gaza.

31. According to the Government of Israel, during the military operations there were four Israeli fatalities in southern Israel, of whom three were civilians and one a soldier. They were killed by rocket and mortar attacks by Palestinian armed groups. In addition, nine Israeli soldiers were killed during the fighting inside the Gaza strip, four of whom as a result of friendly fire.

3. Attacks by Israeli forces on government buildings and persons of the Gaza authorities, including police

32. The Israeli armed forces launched numerous attacks against buildings and persons of the Gaza authorities. As far as attacks on buildings are concerned, the Mission examined the Israeli strikes against the Palestinian Legislative Council building and the Gaza main prison (chap. VII). Both buildings were destroyed and can no longer be used. Statements by Israeli Government and armed forces representatives justified the attacks arguing that political and administrative institutions in Gaza are part of the "Hamas terrorist infrastructure". The Mission rejects this position. It finds that there is no evidence that the Legislative Council building and the Gaza main prison made an effective contribution to military action. On the information available to it, the Mission finds that the attacks on these buildings constituted deliberate attacks on civilian objects in violation of the rule of customary international humanitarian law whereby attacks must be strictly limited to military objectives. These facts further indicate the commission of the grave breach of extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly.

33. The Mission examined the attacks against six police facilities, four of them during the first minutes of the military operations on 27 December 2008, resulting in the death of 99 policemen and nine members of the public. Overall, the approximately 240 policemen killed by Israeli forces constitute more than one sixth of the Palestinian casualties. The circumstances of the attacks seem to indicate, and the Government of Israel's July 2009 report on the military operations confirm, that the policemen were deliberately targeted and killed on the ground that the police, as an institution or a large part of the policemen individually, are, in the Government of Israel's view, part of the Palestinian military forces in Gaza.

34. To examine whether the attacks against the police were compatible with the principle of distinction between civilian and military objects and persons, the Mission analysed the institutional development of the Gaza police since Hamas took complete control of Gaza in July 2007 and merged the Gaza police with the "Executive Force" it had created after its election victory. The Mission finds that, while a great number of the Gaza policemen were recruited among Hamas supporters or members of Palestinian armed groups, the Gaza police were a civilian law-enforcement agency. The Mission also concludes that the policemen killed on 27 December 2008 cannot be said to have been taking a direct part in hostilities and thus did not lose their civilian immunity from direct attack as civilians on this basis. The Mission accepts that there may be individual members of the Gaza police that were at the same time members of

Palestinian armed groups and thus combatants. It concludes, however, that the attacks against the police facilities on the first day of the armed operations failed to strike an acceptable balance between the direct military advantage anticipated (i.e. the killing of those policemen who may have been members of Palestinian armed groups) and the loss of civilian life (i.e. the other policemen killed and members of the public who would inevitably have been present or in the vicinity), and therefore violated international humanitarian law.

4. Obligation on Palestinian armed groups in Gaza to take feasible precautions to protect the civilian population and civilian objects

35. The Mission examined whether and to what extent the Palestinian armed groups violated their obligation to exercise care and take all feasible precautions to protect the civilian population in Gaza from the inherent dangers of the military operations (chap. VIII). The Mission was faced with a certain reluctance by the persons it interviewed in Gaza to discuss the activities of the armed groups. On the basis of the information gathered, the Mission found that Palestinian armed groups were present in urban areas during the military operations and launched rockets from urban areas. It may be that the Palestinian combatants did not at all times adequately distinguish themselves from the civilian population. The Mission found no evidence, however, to suggest that Palestinian armed groups either directed civilians to areas where attacks were being launched or that they forced civilians to remain within the vicinity of the attacks.

36. Although the incidents investigated by the Mission did not establish the use of mosques for military purposes or to shield military activities, it cannot exclude that this might have occurred in other cases. The Mission did not find any evidence to support the allegations that hospital facilities were used by the Gaza authorities or by Palestinian armed groups to shield military activities or that ambulances were used to transport combatants or for other military purposes. On the basis of its own investigations and the statements by United Nations officials, the Mission excludes that Palestinian armed groups engaged in combat activities from United Nations facilities that were used as shelters during the military operations. The Mission cannot, however, discount the possibility that Palestinian armed groups were active in the vicinity of such United Nations facilities and hospitals. While the conduct of hostilities in built-up areas does not, of itself, constitute a violation of international law, Palestinian armed groups, where they launched attacks close to civilian or protected buildings, unnecessarily exposed the civilian population of Gaza to danger.

5. Obligation on Israel to take feasible precautions to protect the civilian population and civilian objects in Gaza

37. The Mission examined how the Israeli armed forces discharged their obligation to take all feasible precautions to protect the civilian population of Gaza, including particularly the obligation to give effective advance warning of attacks (chap. IX). The Mission acknowledges the significant efforts made by Israel to issue warnings through telephone calls, leaflets and radio broadcasts, and accepts that in some cases, particularly when the warnings were sufficiently specific, they encouraged residents to leave an area and get out of harm's way. However, the Mission also notes factors that significantly undermined the effectiveness of the warnings issued. These include the lack of specificity and thus credibility of many pre-recorded phone messages and leaflets. The credibility of instructions to move to city centres for safety was also diminished by the fact that the city centres themselves had been the subject of intense attacks during the air

phase of the military operations. The Mission also examined the practice of dropping lighter explosives on roofs (so-called roof knocking). It concludes that this technique is not effective as a warning and constitutes a form of attack against the civilians inhabiting the building. Finally, the Mission stresses that the fact that a warning was issued does not relieve commanders and their subordinates of taking all other feasible measures to distinguish between civilians and combatants.

38. The Mission also examined the precautions taken by the Israeli armed forces in the context of three specific attacks they launched. On 15 January 2009, the field office compound of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in Gaza City came under shelling with high explosive and white phosphorous munitions. The Mission notes that the attack was extremely dangerous, as the compound offered shelter to between 600 and 700 civilians and contained a huge fuel depot. The Israeli armed forces continued their attack over several hours despite having been fully alerted to the risks they created. The Mission concludes that the Israeli armed forces violated the requirement under customary international law to take all feasible precautions in the choice of means and method of attack with a view to avoiding and in any event minimizing incidental loss of civilian life, injury to civilians and damage to civilian objects.

39. The Mission also finds that, on the same day, the Israeli armed forces directly and intentionally attacked al-Quds hospital in Gaza City and the adjacent ambulance depot with white phosphorous shells. The attack caused fires which took a whole day to extinguish and caused panic among the sick and wounded who had to be evacuated. The Mission finds that no warning was given at any point of an imminent strike. On the basis of its investigation, the Mission rejects the allegation that fire was directed at the Israeli armed forces from within the hospital.

40. The Mission also examined the intense artillery attacks, again including white phosphorous munitions, on al-Wafa hospital in eastern Gaza City, a facility for patients receiving long-term care and suffering from particularly serious injuries. On the basis of the information gathered, the Mission found a violation of the prohibition of attacks on civilian hospitals in both cases. The Mission also highlights that the warnings given by leaflets and pre-recorded phone messages in the case of al-Wafa hospital demonstrate the complete ineffectiveness of certain kinds of routine and generic warnings.

6. Indiscriminate attacks by Israeli forces resulting in the loss of life and injury to civilians

41. The Mission examined the mortar shelling of al-Fakhura junction in Jabaliyah next to a UNRWA school, which, at the time, was sheltering more than 1,300 people (chap. X). The Israeli armed forces launched at least four mortar shells. One landed in the courtyard of a family home, killing 11 people assembled there. Three other shells landed on al-Fakhura Street, killing at least a further 24 people and injuring as many as 40. The Mission examined in detail statements by Israeli Government representatives alleging that the attack was launched in response to a mortar attack from an armed Palestinian group. While the Mission does not exclude that this may have been the case, it considers the credibility of Israel's position damaged by the series of inconsistencies, contradictions and factual inaccuracies in the statements justifying the attack.

42. In drawing its legal conclusions on the attack on al-Fakhura junction, the Mission recognizes that, for all armies, decisions on proportionality, weighing the military advantage to be gained against the risk of killing civilians, will present very genuine dilemmas in certain cases. The Mission does not consider this to be such a case. The firing of at least four mortar shells to attempt to kill a small number of specified individuals in a setting where large numbers of civilians were going about their daily business and 1,368 people were sheltering nearby cannot meet the test of what a reasonable commander would have determined to be an acceptable loss of civilian life for the military advantage sought. The Mission thus considers the attack to have been indiscriminate, in violation of international law, and to have violated the right to life of the Palestinian civilians killed in these incidents.

7. Deliberate attacks against the civilian population

43. The Mission investigated 11 incidents in which the Israeli armed forces launched direct attacks against civilians with lethal outcome (chap. XI). The facts in all bar one of the attacks indicate no justifiable military objective. The first two are attacks on houses in the al-Samouni neighbourhood south of Gaza City, including the shelling of a house in which Palestinian civilians had been forced to assemble by the Israeli armed forces. The following group of seven incidents concern the shooting of civilians while they were trying to leave their homes to walk to a safer place, waving white flags and, in some of the cases, following an injunction from the Israeli forces to do so. The facts gathered by the Mission indicate that all the attacks occurred under circumstances in which the Israeli armed forces were in control of the area and had previously entered into contact with or had at least observed the persons they subsequently attacked, so that they must have been aware of their civilian status. In the majority of these incidents, the consequences of the Israeli attacks against civilians were aggravated by their subsequent refusal to allow the evacuation of the wounded or to permit access to ambulances.

44. These incidents indicate that the instructions given to the Israeli armed forces moving into Gaza provided for a low threshold for the use of lethal fire against the civilian population. The Mission found strong corroboration of this trend in the testimonies of Israeli soldiers collected in two publications it reviewed.

45. The Mission further examined an incident in which a mosque was targeted with a missile during early evening prayers, resulting in the death of 15 people, and an attack with flechette munitions on a crowd of family and neighbours at a condolence tent, killing five. The Mission finds that both attacks constitute intentional attacks against the civilian population and civilian objects.

46. From the facts ascertained in all the above cases, the Mission finds that the conduct of the Israeli armed forces constitutes grave breaches of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons and, as such, give rise to individual criminal responsibility. It also finds that the direct targeting and arbitrary killing of Palestinian civilians is a violation of the right to life.

47. The last incident concerns the bombing of a house resulting in the killing of 22 family members. Israel's position in this case is that there was an "operational error" and that the intended target was a neighbouring house storing weapons. On the basis of its investigation, the Mission expresses significant doubts about the Israeli authorities' account of the incident. The

Mission concludes that, if a mistake was indeed made, there could not be said to be a case of wilful killing. State responsibility of Israel for an internationally wrongful act would, however, remain.

8. The use of certain weapons

48. Based on its investigation of incidents involving the use of certain weapons such as white phosphorous and flechette missiles, the Mission, while accepting that white phosphorous is not at this stage proscribed under international law, finds that the Israeli armed forces were systematically reckless in determining its use in built-up areas. Moreover, doctors who treated patients with white phosphorous wounds spoke about the severity and sometimes untreatable nature of the burns caused by the substance. The Mission believes that serious consideration should be given to banning the use of white phosphorous in built-up areas. As to flechettes, the Mission notes that they are an area weapon incapable of discriminating between objectives after detonation. They are, therefore, particularly unsuitable for use in urban settings where there is reason to believe civilians may be present.

49. While the Mission is not in a position to state with certainty that so-called dense inert metal explosive (DIME) munitions were used by the Israeli armed forces, it did receive reports from Palestinian and foreign doctors who had operated in Gaza during the military operations of a high percentage of patients with injuries compatible with their impact. DIME weapons and weapons armed with heavy metal are not prohibited under international law as it currently stands, but do raise specific health concerns. Finally, the Mission received allegations that depleted and non-depleted uranium were used by the Israeli armed forces in Gaza. These allegations were not further investigated by the Mission.

9. Attacks on the foundations of civilian life in Gaza: destruction of industrial infrastructure, food production, water installations, sewage treatment plants and housing

50. The Mission investigated several incidents involving the destruction of industrial infrastructure, food production, water installations, sewage treatment plants and housing (chap. XIII). Already at the beginning of the military operations, el-Bader flour mill was the only flour mill in the Gaza Strip still operating. The flour mill was hit by a series of air strikes on 9 January 2009, after several false warnings had been issued on previous days. The Mission finds that its destruction had no military justification. The nature of the strikes, in particular the precise targeting of crucial machinery, suggests that the intention was to disable the factory's productive capacity. From the facts it ascertained, the Mission finds that there has been a violation of the grave breaches provisions of the Fourth Geneva Convention. Unlawful and wanton destruction which is not justified by military necessity amounts to a war crime. The Mission also finds that the destruction of the mill was carried out to deny sustenance to the civilian population, which is a violation of customary international law and may constitute a war crime. The strike on the flour mill furthermore constitutes a violation of the right to adequate food and means of subsistence.

51. The chicken farms of Mr. Sameh Sawafeary in the Zeytoun neighbourhood south of Gaza City reportedly supplied over 10 per cent of the Gaza egg market. Armoured bulldozers of the Israeli armed forces systematically flattened the chicken coops, killing all 31,000 chickens inside, and destroyed the plant and material necessary for the business. The Mission concludes

that this was a deliberate act of wanton destruction not justified by any military necessity and draws the same legal conclusions as in the case of the destruction of the flour mill.

52. The Israeli armed forces also carried out a strike against a wall of one of the raw sewage lagoons of the Gaza wastewater treatment plant, which caused the outflow of more than 200,000 cubic metres of raw sewage onto neighbouring farmland. The circumstances of the strike suggest that it was deliberate and premeditated. The Namar wells complex in Jabaliyah consisted of two water wells, pumping machines, a generator, fuel storage, a reservoir chlorination unit, buildings and related equipment. All were destroyed by multiple air strikes on the first day of the Israeli aerial attack. The Mission considers it unlikely that a target the size of the Namar wells could have been hit by multiple strikes in error. It found no grounds to suggest that there was any military advantage to be had by hitting the wells and noted that there was no suggestion that Palestinian armed groups had used the wells for any purpose. Considering that the right to drinking water is part of the right to adequate food, the Mission makes the same legal findings as in the case of the el-Bader flour mill.

53. During its visits to the Gaza Strip, the Mission witnessed the extent of the destruction of residential housing caused by air strikes, mortar and artillery shelling, missile strikes, the operation of bulldozers and demolition charges. In some cases, residential neighbourhoods were subjected to air-launched bombing and to intensive shelling apparently in the context of the advance of Israeli ground forces. In others, the facts gathered by the Mission strongly suggest that the destruction of housing was carried out in the absence of any link to combat engagements with Palestinian armed groups or any other effective contribution to military action. Combining the results of its own fact-finding on the ground with UNOSAT satellite imagery and the published testimonies of Israeli soldiers, the Mission concludes that, in addition to the extensive destruction of housing for so-called operational necessity during their advance, the Israeli armed forces engaged in another wave of systematic destruction of civilian buildings during the last three days of their presence in Gaza, aware of their imminent withdrawal. The conduct of the Israeli armed forces in this respect violated the principle of distinction between civilian and military objects and amounted to the grave breach of "extensive destruction… of property, not justified by military necessity and carried out unlawfully and wantonly". The Israeli armed forces furthermore violated the right to adequate housing of the families concerned.

54. The attacks on industrial facilities, food production and water infrastructure investigated by the Mission are part of a broader pattern of destruction, which includes the destruction of the only cement-packaging plant in Gaza (the Atta Abu Jubbah plant), the Abu Eida factories for ready-mix concrete, further chicken farms and the al-Wadiyah Group's food and drinks factories. The facts ascertained by the Mission indicate that there was a deliberate and systematic policy on the part of the Israeli armed forces to target industrial sites and water installations.

10. The use of Palestinian civilians as human shields

55. The Mission investigated four incidents in which the Israeli armed forces coerced Palestinian civilian men at gunpoint to take part in house searches during the military operations (chap. XIV). The men were blindfolded and handcuffed as they were forced to enter houses ahead of the Israeli soldiers. In one of the incidents, Israeli soldiers repeatedly forced a man to enter a house in which Palestinian combatants were hiding. Published testimonies of Israeli soldiers who took part in the military operations confirm the continuation of this practice, despite

clear orders from Israel's High Court to the armed forces to put an end to it and repeated public assurances from the armed forces that the practice had been discontinued. The Mission concludes that this practice amounts to the use of Palestinian civilians as human shields and is therefore prohibited by international humanitarian law. It puts the right to life of the civilians at risk in an arbitrary and unlawful manner and constitutes cruel and inhuman treatment. The use of human shields also is a war crime. The Palestinian men used as human shields were questioned under threat of death or injury to extract information about Hamas, Palestinian combatants and tunnels. This constitutes a further violation of international humanitarian law.

11. Deprivation of liberty: Gazans detained during the Israeli military operations of 27 December 2008 to 18 January 2009

56. During the military operations, the Israeli armed forces rounded up large numbers of civilians and detained them in houses and open spaces in Gaza and, in the case of many Palestinian men, also took them to detention facilities in Israel. In the cases investigated by the Mission, the facts gathered indicate that none of the civilians was armed or posed any apparent threat to the Israeli soldiers. Chapter XV of the report is based on the Mission's interviews with Palestinian men who were detained, as well as on its review of other relevant material, including interviews with relatives and statements from other victims submitted to it.

57. From the facts gathered, the Mission finds that numerous violations of international humanitarian law and human rights law were committed in the context of these detentions. Civilians, including women and children, were detained in degrading conditions, deprived of food, water and access to sanitary facilities, and exposed to the elements in January without any shelter. The men were handcuffed, blindfolded and repeatedly made to strip, sometimes naked, at different stages of their detention.

58. In the al-Atatra area in north-western Gaza, Israeli troops had dug out sandpits in which Palestinian men, women and children were detained. Israeli tanks and artillery positions were located inside the sandpits and around them and fired from next to the detainees.

59. The Palestinian men who were taken to detention facilities in Israel were subjected to degrading conditions of detention, harsh interrogation, beatings and other physical and mental abuse. Some of them were charged with being unlawful combatants. Those interviewed by the Mission were released after the proceedings against them had apparently been discontinued.

60. In addition to arbitrary deprivation of liberty and violation of due process rights, the cases of the detained Palestinian civilians highlight a common thread of the interaction between Israeli soldiers and Palestinian civilians which also emerged clearly in many cases discussed elsewhere in the report: continuous and systematic abuse, outrages on personal dignity, humiliating and degrading treatment contrary to fundamental principles of international humanitarian law and human rights law. The Mission concludes that this treatment constitutes the infliction of a collective penalty on these civilians and amounts to measures of intimidation and terror. Such acts are grave breaches of the Geneva Conventions and constitute a war crime.

12. Objectives and strategy of Israel's military operations in Gaza

61. The Mission reviewed available information on the planning of the Israeli military operations in Gaza, on the advanced military technology available to the Israeli armed forces and on their training in international humanitarian law (chap. XVI). According to official Government information, the Israeli armed forces have an elaborate legal advice and training system in place, which seeks to ensure knowledge of the relevant legal obligations and support to commanders for compliance in the field. The Israeli armed forces possess very advanced hardware and are also a market leader in the production of some of the most advanced pieces of military technology available, including unmanned aviation vehicles (UAVs). They have a very significant capacity for precision strikes by a variety of methods, including aerial and ground launches. Taking into account the ability to plan, the means to execute plans with the most developed technology available, and statements by the Israeli military that almost no errors occurred, the Mission finds that the incidents and patterns of events considered in the report are the result of deliberate planning and policy decisions.

62. The tactics used by the Israeli armed forces in the Gaza offensive are consistent with previous practices, most recently during the Lebanon war in 2006. A concept known as the Dahiya doctrine emerged then, involving the application of disproportionate force and the causing of great damage and destruction to civilian property and infrastructure, and suffering to civilian populations. The Mission concludes from a review of the facts on the ground that it witnessed for itself that what was prescribed as the best strategy appears to have been precisely what was put into practice.

63. In the framing of Israeli military objectives with regard to the Gaza operations, the concept of Hamas' "supporting infrastructure" is particularly worrying as it appears to transform civilians and civilian objects into legitimate targets. Statements by Israeli political and military leaders prior to and during the military operations in Gaza indicate that the Israeli military conception of what was necessary in a war with Hamas viewed disproportionate destruction and creating maximum disruption in the lives of many people as a legitimate means to achieve not only military but also political goals.

64. Statements by Israeli leaders to the effect that the destruction of civilian objects would be justified as a response to rocket attacks ("destroy 100 homes for every rocket fired") indicate the possibility of resorting to reprisals. The Mission is of the view that reprisals against civilians in armed hostilities are contrary to international humanitarian law.

13. The impact of the military operations and of the blockade on the people of Gaza and their human rights

65. The Mission examined the combined impact of the military operations and of the blockade on the Gaza population and its enjoyment of human rights. The economy, employment opportunities and family livelihoods were already severely affected by the blockade when the Israeli offensive began. Insufficient supply of fuel for electricity generation had a negative impact on industrial activity, on the operation of hospitals, on water supply to households and on sewage treatment. Import restrictions and the ban on all exports from Gaza affected the industrial sector and agricultural production. Unemployment levels and the percentage of the population living in poverty or deep poverty were rising.

66. In this precarious situation, the military operations destroyed a substantial part of the economic infrastructure. As many factories were targeted and destroyed or damaged, poverty, unemployment and food insecurity further increased dramatically. The agricultural sector similarly suffered from the destruction of farmland, water wells and fishing boats during the military operations. The continuation of the blockade impedes the reconstruction of the economic infrastructure that was destroyed.

67. The razing of farmland and the destruction of greenhouses are expected to further worsen food insecurity despite the increased quantities of food items allowed into Gaza since the beginning of the military operations. Dependence on food assistance increases. Levels of stunting and thinness in children and of anaemia prevalence in children and pregnant women were worrying even before the military operations. The hardship caused by the extensive destruction of shelter (the United Nations Development Programme reported 3,354 houses completely destroyed and 11,112 partially damaged) and the resulting displacement particularly affects children and women. The destruction of water and sanitation infrastructure (such as the destruction of the Namar wells and the attack against the water treatment plant described in chapter XIII) aggravated the pre-existing situation. Even before the military operations, 80 per cent of the water supplied in Gaza did not meet the World Health Organization's standards for drinking water. The discharge of untreated or partially treated wastewater into the sea is a further health hazard worsened by the military operations.

68. The military operations and resulting casualties subjected the beleaguered Gaza health sector to additional strain. Hospitals and ambulances were targeted by Israeli attacks. Patients with chronic health conditions could not be given priority in hospitals faced with an influx of patients with life-threatening injuries. Patients injured during the hostilities were often discharged quickly to free beds. The long-term health impact of these early discharges, as well as of weapons containing substances such as tungsten and white phosphorous, remains a source of concern. While the exact number of people who will suffer permanent disabilities is still unknown, the Mission understands that many persons who sustained traumatic injuries during the conflict still face the risk of permanent disability owing to complications and inadequate follow-up and physical rehabilitation.

69. The number of persons suffering from mental health problems is also bound to increase. The Mission investigated a number of incidents in which adults and children witnessed the killing of loved ones. Doctors of the Gaza Community Mental Health Programme gave information to the Mission on psychosomatic disorders, on a widespread state of alienation in the population and on "numbness" as a result of severe loss. They told the Mission that these conditions were in turn likely to increase the readiness to embrace violence and extremism. They also told the Mission that 20 per cent of children in the Gaza Strip suffer from post-traumatic stress disorders.

70. Children's psychological learning difficulties are compounded by the impact of the blockade and the military operations on the education infrastructure. Some 280 schools and kindergartens were destroyed in a situation in which restrictions on the importation of construction materials meant that many school buildings were already in serious need of repair.

71. The Mission's attention was also drawn to the particular manner in which women were affected by the military operations. The cases of women interviewed by the Mission in Gaza

dramatically illustrate the suffering caused by the feeling of inability to provide children with the care and security they need. Women's responsibility for the household and the children often forces them to conceal their own sufferings, resulting in their issues remaining unaddressed. The number of women who are the sole breadwinners increased, but their employment opportunities remain significantly inferior to men's. The military operations and increased poverty add to the potential for conflicts in the family and between widows and their in-laws.

72. The Mission acknowledges that the supply of humanitarian goods, particularly foodstuffs, allowed into Gaza by Israel temporarily increased during the military operations. The level of goods allowed into Gaza before the military operations was, however, insufficient to meet the needs of the population even before hostilities started, and has again decreased since the end of the military operations. From the facts ascertained by it, the Mission believes that Israel has violated its obligation to allow free passage of all consignments of medical and hospital objects, food and clothing (article 23 of the Fourth Geneva Convention). The Mission also finds that Israel violated specific obligations which it has as the occupying Power and which are spelled out in the Fourth Geneva Convention, such as the duty to maintain medical and hospital establishments and services and to agree to relief schemes if the occupied territory is not well supplied.

73. The Mission also concludes that in the destruction by the Israeli armed forces of private residential houses, water wells, water tanks, agricultural land and greenhouses there was a specific purpose of denying sustenance to the population of the Gaza Strip. The Mission finds that Israel violated its duty to respect the right of the Gaza population to an adequate standard of living, including access to adequate food, water and housing. The Mission, moreover, finds violations of specific human rights provisions protecting children, particularly those who are victims of armed conflict, women and the disabled.

74. The conditions of life in Gaza, resulting from deliberate actions of the Israeli armed forces and the declared policies of the Government of Israel – as they were presented by its authorized and legitimate representatives – with regard to the Gaza Strip before, during and after the military operation, cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip in violation of international humanitarian law.

75. Finally, the Mission considered whether the series of acts that deprive Palestinians in the Gaza Strip of their means of sustenance, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their access to courts of law and effective remedies could amount to persecution, a crime against humanity. From the facts available to it, the Mission is of the view that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed.

14. The continuing detention of Israeli soldier Gilad Shalit

76. The Mission notes the continued detention of Gilad Shalit, a member of the Israeli armed forces, captured in 2006 by a Palestinian armed group. In reaction to his capture, the Israeli Government ordered a number of attacks against infrastructure in the Gaza Strip and Palestinian Authority offices as well as the arrest of eight Palestinian Government ministers and 26 members of the Palestinian Legislative Council. The Mission heard testimonies indicating that, during the

military operations of December 2008 – January 2009, Israeli soldiers questioned captured Palestinians about the whereabouts of Gilad Shalit. Gilad Shalit's father, Noam Shalit, appeared before the Mission at the public hearing held in Geneva on 6 July 2009.

77. The Mission is of the opinion that, as a soldier who belongs to the Israeli armed forces and who was captured during an enemy incursion into Israel, Gilad Shalit meets the requirements for prisoner-of-war status under the Third Geneva Convention. As such, he should be protected, treated humanely and be allowed external communication as appropriate according to that Convention. The International Committee of the Red Cross (ICRC) should be allowed to visit him without delay. Information about his condition should also be provided promptly to his family.

78. The Mission is concerned by declarations made by various Israeli officials who have indicated the intention of maintaining the blockade of the Gaza Strip until the release of Gilad Shalit. The Mission is of the opinion that this would constitute collective punishment of the civilian population of the Gaza Strip.

15. Internal violence and targeting of Fatah affiliates by security services under the control of the Gaza authorities

79. The Mission obtained information about violence against political opponents by the security services that report to the Gaza authorities. These included the killing of a number of Gaza residents between the beginning of the Israeli military operations and 27 February. Among these were some detainees who had been at al-Saraya detention facility on 28 December and who had fled following the Israeli aerial attack. Not all those killed after escaping detention were Fatah affiliates, detained for political reasons, or charged with collaborating with the enemy. Some of the escapees had been convicted of serious crimes, such as drug-dealing or murder, and had been sentenced to death. The Mission was informed that the movement of many Fatah members was restricted during Israel's military operations in Gaza and that many were put under house arrest. According to the Gaza authorities, arrests were made only after the end of the Israeli military operations and only in relation to criminal acts and to restore public order.

80. The Mission gathered first-hand information on five cases of Fatah affiliates detained, killed or subject to physical abuse by members of the security forces or armed groups in Gaza. In most cases those abducted from their homes or otherwise detained were reportedly not accused of offences related to specific incidents, but rather targeted because of their political affiliation. When charges were laid, these were always linked to suspected political activities. The testimonies of witnesses and the reports provided by international and domestic human rights organizations bear striking similarities and indicate that these attacks were not randomly executed, but constituted part of a pattern of organized violence directed mainly against Fatah affiliates and supporters. The Mission finds that such actions constitute serious violations of human rights and are not consistent with either the Universal Declaration of Human Rights or the Palestinian Basic Law.

The Occupied Palestinian Territory: the West Bank, including East Jerusalem

81. The Mission considered developments in Gaza and the West Bank as closely interrelated, and analysed both to reach an informed understanding of and to report on issues within its mandate.

82. A consequence of Israel's non-cooperation with the Mission was that the Mission was unable to visit the West Bank to investigate alleged violations of international law there. However, the Mission has received many oral and written reports and other relevant materials from Palestinian, Israeli and international human rights organizations and institutions. In addition, the Mission has met representatives of human rights organizations, members of the Palestinian legislature and community leaders. It heard experts, witnesses and victims at the public hearings, interviewed affected individuals and witnesses, and reviewed video and photographic material.

1. Treatment of Palestinians in the West Bank by Israeli security forces, including use of excessive or lethal force during demonstrations

83. Various witnesses and experts informed the Mission of a sharp rise in the use of force by the Israeli security forces against Palestinians in the West Bank from the beginning of the Israeli operations in Gaza (chap. XX). A number of protestors were killed by Israeli forces during Palestinian demonstrations, including in support of the Gaza population under attack, and scores were injured. The level of violence used in the West Bank during the time of the operation in Gaza was sustained also after the operation.

84. Of particular concern to the Mission were allegations of the use of unnecessary, lethal force by Israeli security forces, the use of live ammunitions, and the provision in the Israeli armed forces "open fire regulations" of different rules to deal with disturbances where only Palestinians are present and those where Israelis are present. This raises serious concern with regard to discriminatory policies vis-à-vis Palestinians. Eyewitnesses also reported to the Mission on the use of sniper fire in the context of crowd control. Witnesses spoke of the markedly different atmosphere they encountered in the confrontation with the soldiers and border police during demonstrations in which all checks and balances had been removed. Several witnesses told the Mission that during the operation in Gaza, the sense in the West Bank was one of a "free for all", where anything was permitted.

85. Little if any action is taken by the Israeli authorities to investigate, prosecute and punish violence against Palestinians, including killings, by settlers and members of the security forces, resulting in a situation of impunity. The Mission concludes that Israel has failed to fulfil its obligations to protect the Palestinians from violence by private individuals under both international human rights law and international humanitarian law.

2. Detention of Palestinians in Israeli prisons

86. It is estimated that, since the beginning of the occupation, approximately 700,000 Palestinian men, women and children have been detained by Israel. According to estimates, as at 1 June 2009, there were approximately 8,100 Palestinian "political prisoners" in detention in Israel, including 60 women and 390 children. Most of these detainees are charged or convicted

by the Israeli military court system that operates for Palestinians in the West Bank and under which due process rights for Palestinians are severely limited. Many are held in administrative detention and some under the Israeli "Unlawful Combatants Law".

87. The Mission focused on a number of issues in relation to Palestinian detainees that in its view are linked to the December-January Israeli military operations in Gaza or their context.

88. Legal measures since Israel's disengagement from Gaza in 2005 have resulted in differential treatment for Gazan detainees. A 2006 law altered due process guarantees and is applied only to Palestinian suspects, the overwhelming majority of whom are from Gaza, according to Israeli Government sources. The ICRC Family Visits Programme in the Gaza Strip was suspended in 2007, barring all means of communication between Gazan prisoners and the outside world.

89. During the Israeli military operations in Gaza, the number of children detained by Israel was higher than in the same period in 2008. Many children were reportedly arrested on the street and/or during demonstrations in the West Bank. The number of child detainees continued to be high in the months following the end of the operations, accompanied by reports of abuses by Israeli security forces.

90. A feature of Israel's detention practice vis-à-vis the Palestinians since 2005 has been the arrest of Hamas affiliates. A few months before the elections for the Palestinian Legislative Council in 2005, Israel arrested numerous persons who had been involved in municipal or Legislative Council elections. Following the capture by Palestinian armed groups of Israeli soldier Gilad Shalit in June 2006, the Israeli armed forces arrested some 65 members of the Legislative Council, mayors and ministers, mostly Hamas members. All were held at least two years, generally in inadequate conditions. Further arrests of Hamas leaders were conducted during the military operations in Gaza. The detention of members of the Legislative Council has meant that it has been unable to function and exercise its legislative and oversight function over the Palestinian executive.

91. The Mission finds that these practices have resulted in violations of international human rights and humanitarian law, including the prohibition of arbitrary detention, the right to equal protection under the law and not to be discriminated based on political beliefs and the special protections to which children are entitled. The Mission also finds that the detention of members of the Legislative Council may amount to collective punishment contrary to international humanitarian law.

3. Restrictions on freedom of movement in the West Bank

92. In the West Bank, Israel has long imposed a system of restrictions on movement. Movement is restricted by a combination of physical obstacles, such as roadblocks, checkpoints and the Wall, and administrative measures, such as identity cards, permits, assigned residence, laws on family reunification, and policies on the right to enter from abroad and the right of return for refugees. Palestinians are denied access to areas expropriated for the building of the Wall and its infrastructure, for use by settlements, buffer zones, military bases and military training zones, and the roads built to connect these places. Many of these roads are "Israeli only" and forbidden for Palestinian use. Tens of thousands of Palestinians today are subject to a travel ban imposed

by Israel, preventing them from travelling abroad. A number of witnesses and experts invited by the Mission to meet in Amman and participate in the hearings in Geneva could not meet the Mission owing to this travel ban.

93. The Mission has received reports that, during the Israeli offensive in Gaza, restrictions on movement in the West Bank were tightened. Israel imposed a "closure" on the West Bank for several days. In addition, there were more checkpoints in the West Bank, including in East Jerusalem, for the duration of the operation. Most of these were so-called flying checkpoints. In January 2009, several areas of the West Bank between the Wall and the Green Line were declared "closed military areas".

94. During and following the operations in Gaza, Israel tightened its hold on the West Bank by increasing expropriations, house demolitions and demolition orders, granting more permits for homes built in settlements and intensifying the exploitation of the natural resources in the West Bank. Following the operations in Gaza, Israel has amended the regulations which determine the ability of persons with "Gaza ID" to move to the West Bank and vice versa, further entrenching the separation between the people of the West Bank and Gaza.

95. Israel's Ministry of Housing and Planning is planning a further 73,000 settlement homes in the West Bank. The building of 15,000 of these homes has already been approved and, if all the plans are realized, the number of settlers in the Occupied Palestinian Territory will double.

96. The Mission believes that the restrictions on movement and access to which Palestinians in the West Bank are subject, in general, and the tighter restrictions during and, to some extent, after the military operations in Gaza, in particular, are disproportionate to any military objective served . In addition, the Mission is concerned about the steps taken recently to formalize the separation between Gaza and the West Bank, and as such between two parts of the Occupied Palestinian Territory.

4. Internal violence and targeting of Hamas supporters by the Palestinian Authority, restrictions on freedom of expression and assembly

97. The Mission has received allegations of violations relevant to its mandate committed by the Palestinian Authority in the period under inquiry. These include violations related to the treatment of (suspected) Hamas affiliates by the security services, including unlawful arrest and detention. Several Palestinian human rights organizations have reported that practices used by the Palestinian Authority security forces in the West Bank amount to torture and cruel, inhuman and degrading treatment and punishment. There have been a number of deaths in detention to which it is suspected that torture and other ill-treatment may have contributed or which they may have caused. Complaints of such practices have not been investigated.

98. Allegations were also received about the use of excessive force and the suppression of demonstrations by Palestinian security services – particularly those in support of the population of Gaza during the Israeli military operations. On these occasions Palestinian Authority security services have allegedly arrested many individuals and prevented the media from covering the events. The Mission also received allegations of harassment by Palestinian security services of journalists who expressed critical views.

99. The disabling of the Palestinian Legislative Council following the arrest and detention by Israel of several of its members has effectively curtailed parliamentary oversight over the Palestinian Authority executive. The executive has passed decrees and regulations to enable it to continue its day-to-day operations.

100. Other allegations include the arbitrary closure of charities and associations affiliated with Hamas and other Islamic groups or the revocation and non-renewal of their licences, the forcible replacement of board members of Islamic schools and other institutions, and the dismissal of Hamas-affiliated teachers.

101. The Palestinian Authority continues to discharge a large number of civil and military service employees, or suspend their salaries, under the pretext of "non-adherence to the legitimate authority" or "non-obtainment of security approval" on their appointments, which has become a pre-requirement for enrolment in public service. In effect, this measure excludes Hamas supporters or affiliates from public sector employment.

102. The Mission is of the view that the reported measures are inconsistent with the Palestinian Authority's obligations deriving from the Universal Declaration of Human Rights and the Palestinian Basic Law.

Israel

1. Impact on civilians of rocket and mortar attacks by Palestinian armed groups on southern Israel

103. Palestinian armed groups have launched about 8000 rockets and mortars into southern Israel since 2001 (chap. XXIV). While communities such as Sderot and Nir Am kibbutz have been within the range of rocket and mortar fire since the beginning, the range of rocket fire increased to nearly 40 kilometres from the Gaza border, encompassing towns as far north as Ashdod, during the Israeli military operations in Gaza.

104. Between 18 June 2008 and 18 January 2009, rockets fired by Palestinian armed groups in Gaza have killed three civilians inside Israel and two civilians in Gaza when a rocket landed short of the border on 26 December 2008. Reportedly, over 1000 civilians inside Israel were physically injured as a result of rocket and mortar attacks, 918 of whom were injured during the time of the Israeli military operations in Gaza.

105. The Mission has taken particular note of the high level of psychological trauma suffered by the civilian population inside Israel. Data gathered by an Israeli organization in October 2007 found that 28.4 per cent of adults and 72–94 per cent of children in Sderot suffered from post-traumatic stress disorder. During the military operations in Gaza 1596 people were reportedly treated for stress-related injuries while afterwards over 500 people were treated.

106. Rockets and mortars have damaged houses, schools and cars in southern Israel. On 5 March 2009, a rocket struck a synagogue in Netivot. The rocket and mortar fire has adversely affected the right to education of children and adults living in southern Israel. This is a result of school closures and interruptions to classes by alerts and moving to shelters but also the

diminished ability to learn that is witnessed in individuals experiencing symptoms of psychological trauma.

107. The rocket and mortar fire has also had an adverse impact on the economic and social life of the affected communities. For communities such as Ashdod, Yavne, Beersheba, which experienced rocket strikes for the first time during the Israeli military operations in Gaza, there was a brief interruption to their economic and cultural activities brought about by the temporary displacement of some residents. For towns closer to the Gaza border, which have been under rocket and mortar fire since 2001, the recent escalation has added to the exodus of residents.

108. The Mission has determined that the rockets and, to a lesser extent, the mortars fired by the Palestinian armed groups are incapable of being directed towards specific military objectives and have been fired into areas where civilian populations are based. The Mission has further determined that these attacks constitute indiscriminate attacks upon the civilian population of southern Israel and that, where there is no intended military target and the rockets and mortars are launched into a civilian population, they constitute a deliberate attack against a civilian population. These acts would constitute war crimes and may amount to crimes against humanity. Given the seeming inability of the Palestinian armed groups to direct the rockets and mortars towards specific targets and given that the attacks have caused very little damage to Israeli military assets, the Mission finds that there is significant evidence to suggest that one of the primary purposes of the rocket and mortar attacks is to spread terror among the Israeli civilian population, a violation of international law.

109. Noting that some of the Palestinian armed groups, among them Hamas, have publicly expressed their intention to target civilians in reprisal for the civilian fatalities in Gaza as a result of Israeli military operations, the Mission is of the view that reprisals against civilians in armed hostilities are contrary to international humanitarian law.

110. The Mission notes that the relatively few casualties sustained by civilians inside Israel is due in large part to the precautions put into place by Israel. This includes an early warning system, the provision of public shelters and fortifications of schools and other public buildings at great financial cost – a projected US$ 460 million between 2005 and 2011 – to the Government of Israel. The Mission is greatly concerned, however, about the lack of an early warning system and a lack of public shelters and fortifications for the Palestinian Israeli communities living in unrecognized and in some of the recognized villages that are within the range of rocket and mortars being fired by Palestinian armed groups in Gaza.

2. Repression of dissent in Israel, the right of access to information and treatment of human rights defenders

111. The Mission received reports that individuals and groups, viewed as sources of criticism of Israel's military operations were subjected to repression or attempted repression by the Government of Israel. Amidst a high level of support for the Israeli military operations in Gaza from the Israeli Jewish population, there were also widespread protests against the military operations inside Israel. Hundreds of thousands – mainly, but not exclusively, Palestinian citizens of Israel – protested. While, in the main, the protests were permitted to take place, there were occasions when, reportedly, protesters had difficulty in obtaining permits – particularly in areas populated mainly by Palestinian Israelis. In Israel and in occupied East Jerusalem 715

people were arrested during the protests. There appear to have been no arrests of counter-protesters and 34 per cent of those arrested were under 18 years of age. The Mission notes that a relatively small proportion of those protesting were arrested. The Mission urges the Government of Israel to ensure that the police authorities respect the rights of all its citizens, without discrimination, including freedom of expression and the right to peaceful assembly, as guaranteed to them by the International Covenant on Civil and Political Rights.

112. The Mission notes with concern the reported instances of physical violence committed by members of the police against protesters, including the beating of protesters and other inappropriate conduct such as subjecting Palestinian citizens of Israel who were arrested to racial abuse and making sexual comments about female members of their families. Article 10 of the Covenant requires that those deprived of their liberty be treated with humanity and respect for the inherent dignity of the human person.

113. Of the protesters brought before the Israeli courts, the Palestinian Israelis were disproportionately held in detention pending trial. The element of discrimination and differential treatment between Palestinian and Jewish citizens of Israel by the judicial authorities, as indicated in the reports received, is a substantial cause for concern.

114. The interviews of political activists by the Israeli General Security Services were cited as the actions contributing most significantly to a climate of repression inside Israel. The Mission is concerned about activists being compelled to attend interviews with Shabak (also known as Shin Bet), without there being any legal obligation on them to do so, and in general at the alleged interrogation of political activists about their political activities.

115. The Mission received reports concerning the investigation by the Government of Israel into New Profile on allegations that it was inciting draft-dodging, a criminal offence, and reports that the Government was seeking to terminate funding from foreign Governments for Breaking the Silence, following its publication of testimonies of Israeli soldiers concerning the conduct of the Israeli armed forces in Gaza in December 2008 and January 2009. The Mission is concerned that the Government of Israel's action with regard to these organizations may have an intimidating effect on other Israeli human rights organizations. The so-called United Nations Declaration on Human Rights Defenders guarantees the right "to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means". If motivated by reaction to the organization's exercise of its freedom of expression, lobbying foreign Governments to terminate funding would be contrary to the spirit of the Declaration.

116. The Government of Israel imposed a ban on media access to Gaza following 5 November 2008. Furthermore, access was denied to human rights organizations and the ban continues for some international and Israeli organizations. The Mission can find no justification for this. The presence of journalists and international human rights monitors aids the investigation and wide public reporting of the conduct of the parties to the conflict, and can inhibit misconduct. The Mission observes that Israel, in its actions against political activists, non-governmental organizations and the media, has attempted to reduce public scrutiny of both its conduct during its military operations in Gaza and the consequences that these operations had for the residents of Gaza, possibly seeking to prevent investigation and public reporting thereon.

D. Accountability

1. Proceedings and responses by Israel to allegations of violations by its armed forces against Palestinians

117. Investigations and, if appropriate, prosecutions of those suspected of serious violations are necessary if respect for human rights and humanitarian law is to be ensured and to prevent the development of a climate of impunity. States have a duty under international law to investigate allegations of violations.

118. The Mission reviewed public information and reports from the Government of Israel concerning actions taken to discharge its obligation to investigate alleged violations (chap. XXVI). It addressed to Israel a number of questions on this issue, but it did not receive a reply.

119. In response to allegations of serious violations of human rights law and international humanitarian law, the Military Advocate General ordered some criminal investigations that were closed two weeks later concluding that allegations "were based on hearsay". The Israeli armed forces also released the results of five special investigations carried out by high-ranking military officers, which concluded that "throughout the fighting in Gaza, the IDF operated in accordance with international law", but the investigations reportedly revealed a very small number of errors. On 30 July 2009 the media reported that the Military Advocate General had ordered the military police to launch criminal investigations into 14 cases out or nearly 100 complaints of criminal conduct by soldiers. No details were offered.

120. The Mission reviewed the Israeli internal system of investigation and prosecution according to its national legislation and in the light of practice. The system comprises: (a) disciplinary proceedings; (b) operational debriefings (also known as "operational investigations"); (c) special investigations, performed by a senior officer at the request of the chief of staff; and (d) military police investigations, carried out by the Criminal Investigation Division of the military police. At the heart of the system lies the so-called operational debriefing. The debriefings are reviews of incidents and operations conducted by soldiers from the same unit or line of command together with a superior officer. They are meant to serve operational purposes.

121. International human rights law and humanitarian law require States to investigate and, if appropriate, prosecute allegations of serious violations by military personnel. International law has also established that such investigations should comply with standards of impartiality, independence, promptness and effectiveness. The Mission holds that the Israeli system of investigation does not comply with all those principles. In relation to the "operational debriefing" used by the Israeli armed forces as an investigative tool, the Mission holds the view that a tool designed for the review of performance and to learn lessons can hardly be an effective and impartial investigation mechanism that should be instituted after every military operation where allegations of serious violations have been made. It does not comply with internationally recognized principles of impartiality and promptness in investigations. The fact that proper criminal investigations can start only after the "operational debriefing" is over is a major flaw in the Israeli system of investigation.

122. The Mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission is also of the view that the Israeli system overall presents inherently discriminatory features that make the pursuit of justice for Palestinian victims very difficult.

2. Proceedings by Palestinian authorities

(a) Proceedings related to actions in the Gaza Strip

123. The Mission found no evidence of any system of public monitoring or accountability for serious violations of international humanitarian law and human rights law set up by the Gaza authorities. The Mission is concerned with the consistent disregard for international humanitarian law with which armed groups in the Gaza Strip conduct their armed activities, through rocket and mortar fire, directed against Israel. Despite some media reports, the Mission remains unconvinced that any genuine and effective initiatives have been taken by the authorities to address the serious issues of violation of international humanitarian law in the conduct of armed activities by militant groups in the Gaza Strip.

124. Notwithstanding statements by the Gaza authorities and any action that they may have taken, of which the Mission is unaware, the Mission also considers that allegations of killings, torture and mistreatment within the Gaza Strip have gone largely without investigation.

(b) Proceedings related to actions in the West Bank

125. With regard to relevant violations identified in the West Bank, it appears that, with few exceptions, there has been a degree of tolerance towards human rights violations against political opponents, which has resulted in a lack of accountability for such actions. The Ministry of Interior has also ignored the High Court's decisions to release a number of detainees or to reopen some associations closed by the administration.

126. In the circumstances, the Mission is unable to consider the measures taken by the Palestinian Authority as meaningful for holding to account perpetrators of serious violations of international law and believes that the responsibility for protecting the rights of the people inherent in the authority assumed by the Palestinian Authority must be fulfilled with greater commitment

3. Universal jurisdiction

127. In the context of increasing unwillingness on the part of Israel to open criminal investigations that comply with international standards, the Mission supports the reliance on universal jurisdiction as an avenue for States to investigate violations of the grave breach provisions of the Geneva Conventions of 1949, prevent impunity and promote international accountability (chap. XXVIII).

4. Reparations

128. International law also establishes that, whenever a violation of an international obligation occurs, an obligation to provide reparation arises. It is the view of the Mission that the current

constitutional structure and legislation in Israel leaves very little room, if any, for Palestinians to seek compensation. The international community needs to provide for an additional or alternative mechanism of compensation for damage or loss incurred by Palestinian civilians during the military operations (chap. XXIX).

E. Conclusions and recommendations

129. The Mission draws general conclusions on its investigations in chapter XXX, which also includes a summary of its legal findings.

130. The Mission then makes recommendations to a number of United Nations bodies, Israel, the responsible Palestinian authorities and the international community on: (a) accountability for serious violations of international humanitarian law; (b) reparations; (c) serious violations of human rights law; (d) the blockade and reconstruction; (e) the use of weapons and military procedures; (f) the protection of human rights organizations and defenders ; (g) follow-up to the Mission's recommendations. The recommendations are detailed in chapter XXXI.

PART ONE: METHODODOGY, CONTEXT AND APPLICABLE LAW

INTRODUCTION

131. On 3 April 2009, the President of the Human Rights Council established the United Nations Fact Finding Mission on the Gaza Conflict with the mandate "to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after." The appointment of the Mission followed the adoption on 12 January 2009 of resolution S-9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip, by the United Nations Human Rights Council at the end of its ninth special session.

132. The President appointed Justice Richard Goldstone, former judge of the Constitutional Court of South Africa and former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, to head the Mission. The other three appointed members were: Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, who was a member of the high-level fact-finding mission to Beit Hanoun (2008); Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary-General on the situation of human rights defenders, who was a member of the International Commission of Inquiry on Darfur (2004); and Colonel Desmond Travers, a former Officer in Ireland's Defence Forces and member of the Board of Directors of the Institute for International Criminal Investigations.

133. As is usual practice, the Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the Mission.

134. Between the adoption of resolution S-9/1 in January and the establishment of the Mission at the beginning of April, a broad cross section of actors, including domestic and international non-governmental organizations (NGOs) and United Nations agencies and bodies, had already conducted numerous investigations and produced reports on the military operations in Gaza, all of which were taken into account by the Mission in its work of fact-finding and analysis.

135. Bearing in mind that the resolution of the Council had called for the urgent dispatch of the Mission and given the 11-week delay in its establishment, the Mission agreed to be bound by a short time frame (about three months) to complete its work and report to the Council at the earliest opportunity.

136. The Mission interpreted the mandate as requiring it to place the civilian population of the region at the centre of its concerns regarding the violations of international law. Accordingly, the Mission has made victims its first priority and it will draw attention to their plight in the context of the events under investigation. The members of the Mission hope that their situation will not be neglected by any political agenda for the region.

137. The Mission considered it crucial for the implementation of its mandate to meet with the widest possible range of stakeholders relevant to the facts under inquiry. During the three months of its work in Geneva, Gaza, Amman and elsewhere, the Mission met representatives of civil

society, including domestic and international NGOs; women's organizations; bar associations; military analysts; medical doctors; mental health experts; representatives of the business/private sector, including agriculture and fishery; representatives of associations of persons with disabilities; journalists and other representatives of domestic and international media outlets; representatives of United Nations organs and bodies as well as other international organizations: the Secretary-General of the United Nations, the United Nations High Commissioner for Human Rights; the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the Special Coordinator for the Middle East Peace Process, the Head of the United Nations Board of Inquiry into incidents in Gaza; diplomatic representatives of Member States of the United Nations in Geneva and in the Occupied Palestinian Territory; members of the Palestinian Legislative Council from both Gaza and the West Bank; ministers and officials of the Palestinian Authority; senior members of the Gaza authorities;[1] former Government and military officials of the Government of Israel (see annex I).

138. The Mission convened for the first time in Geneva between 4 and 8 May 2009, when it established its methods of work and a three-month programme of activities. It also had initial briefings and consultations with a wide range of stakeholders. The Mission met the diplomatic community in Geneva, including the President of the Human Rights Council, members of the Council and sponsors of resolution S-9/1.

139. Additionally, the Mission met in Geneva on 20 May, on 4 and 5 July, and between 1 and 4 August 2009. The Mission conducted three field visits: two to the Gaza Strip between 30 May and 6 June, and between 25 June and 1 July 2009; and one visit to Amman on 2 and 3 July 2009. Several staff of the Mission's secretariat were present in Gaza from 22 May to 4 July 2009.

140. On 7 May, notes verbales were sent to all United Nations organs and bodies and Member States of the United Nations. Egypt, Lebanon, Romania, the United Nations Children's Fund (UNICEF) on behalf of the 1612 Working Group on Grave Violations against Children established for Israel and the Occupied Palestinian Territory,[2] the World Health Organization (WHO), and the United Nations Population Fund (UNFPA) replied to the notes verbales. Documentation was also made available by other specialized agencies and other organizations in the United Nations system, including the Food and Agriculture Organization of the United Nations (FAO), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), UNRWA, and the Operational Satellite Applications Programme (UNOSAT) of the United Nations Institute for Training and Research (UNITAR). On 8 June 2009, the Mission issued a call for submissions inviting all interested persons and organizations to submit relevant information and documentation to assist in the implementation of its mandate. In response, the Mission received 31 submissions from individuals and organizations. Throughout its work, the Mission received or had access to a variety of documents from multiple sources (see chap. I).

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[1] The term "Gaza authorities" is used to refer to the de facto Hamas-led authorities established in Gaza since June 2007. See chap. II for details.

[2] This Working Group was set up following the adoption by the United Nations Security Council of resolution 1612/2005) establishing a monitoring and reporting mechanism to ensure the protection of children affected by armed conflict.

141. Public hearings were held in Gaza on 28 and 29 June and in Geneva on 6 and 7 July 2009.

142. Upon appointment on 3 April 2009, the Head of the Mission held a press conference in Geneva together with the President of the Human Rights Council. The Mission issued a press release on 8 May, at the end of its first official meeting, and on 29 May, before travelling to Gaza. Additionally, the Mission held press conferences in Gaza on 4 June, at the end of its first visit, and on 7 July 2009, at the end of the public hearings in Geneva. The Head of the Mission was interviewed several times by the international media[3].

Cooperation with the parties

143. Since its inception, the Mission has requested the cooperation of all relevant authorities to enable it to visit and meet victims in Gaza, the West Bank and Israel.

144. Immediately upon appointment, the Head of the Mission sought to consult the Permanent Representative of Israel to the United Nations Office at Geneva, who unfortunately declined to meet him. Following an exchange of letters between 3 and 7 April, the Permanent Representative of Israel informed the Head of the Mission that his Government would not be able to cooperate with the Mission. On 29 April, an additional invitation to the Permanent Representative of Israel to meet the Mission was also unsuccessful. On 4 May, the Mission wrote to the Prime Minister of Israel, reiterating its request for cooperation, in particular by providing access to Gaza, the West Bank, including East Jerusalem, and Israel. During a meeting on 6 May 2009 with the President of Israel, the United Nations Secretary-General referred to and supported the Mission's request for cooperation from the Government of Israel. In a letter dated 20 May 2009, the Mission attempted again to obtain the cooperation of the Israeli Government, especially in view of its planned visit to the Gaza Strip. In view of the refusal of cooperation from the Government of Israel, in order to be able to fulfil the mandate entrusted by the Human Rights Council within the aforementioned time frame, the Mission sought and obtained the assistance of the Government of Egypt to enable it to enter Gaza through the Rafah crossing. The Mission had additional written exchanges with the Permanent Representative of Israel in Geneva between 2 and 17 July 2099. (See annex II.)

145. Upon appointment, the Head of the Mission consulted the Permanent Observer of Palestine to the United Nations Office at Geneva, who promptly extended the cooperation of the Palestinian Authority to the Mission. The Mission has remained in contact with the Permanent Observer Mission of Palestine, and has enjoyed the support and cooperation of the Palestinian Authority. Due to the lack of cooperation from the Israeli Government, the Mission was unable to meet members of the Palestinian Authority in the West Bank. The Mission did, however, meet officials of the Palestinian Authority, including a cabinet minister, in Amman. A Palestinian minister was prevented from travelling to meet the Mission in Amman (see chap. I). During its visits to the Gaza Strip, the Mission held meetings with senior members of the Gaza authorities and they extended their full cooperation and support to the Mission.

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[3] The webpage of the Mission can be found at: http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm.

Protection of persons cooperating with the Mission

146. In the implementation of its mandate the Mission has called for the protections that are required under the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, better known as the Declaration on Human Rights Defenders, to be accorded to all who gave testimony at the public hearings. The Mission also was guided by Commission on Human Rights resolution 2005/9 which "urges Governments to refrain from all acts of intimidation or reprisal against (a) those who seek to cooperate or have cooperated with representatives of United Nations human rights bodies, or who have provided testimony or information to them".

147. Subsequent to the public hearings in Geneva, the Mission was informed that a Palestinian participant, Mr. Muhammad Srour, had been detained by Israeli security forces when returning to the West Bank and became concerned that his detention may have been a consequence of his appearance before the Mission. The Mission wrote to the Permanent Representative of Israel in Geneva expressing its concern. In response, the Permanent Representative informed the Mission that the detention of the person concerned was unrelated to his appearance at the public hearing. Mr. Srour was subsequently released on bail. The Mission is in contact with him and continues to monitor developments.

148. The Mission is also concerned about anonymous calls and messages received on private phone numbers and e-mail addresses by some of those who provided information to it or assisted in its work in the Gaza Strip. The contents seemed to imply that the originators of these anonymous calls and messages regarded those who cooperated with the Mission as potentially associated with armed groups. One of the recipients conveyed to the Mission apprehensions about personal safety and a feeling of intimidation. The Mission also wishes to record that there are others who have declined to appear before it or to provide information or, having cooperated with the Mission, have asked that their names should not be disclosed, for fear of reprisal.

Acknowledgments

149. The Mission is deeply grateful to the numerous Palestinians and Israelis, especially victims and witnesses of violations, who have shared with it their stories and views. It is equally grateful to the many Palestinian and Israeli civil society and NGOs, and to the Palestinian Independent Commission for Human Rights. They are at the forefront of the protection and promotion of human rights in the region and carry out their work with courage, professionalism and independence in very difficult circumstances. The Mission is also grateful to all the domestic and international NGOs that have supported its mandate and have provided a vast amount of relevant and well-documented information. Without the support and the assistance of United Nations agencies, programmes and other bodies, and particularly of the United Nations staff in Gaza, the Mission would have not been able to complete its work. Heartfelt thanks go to all of them. The Mission wishes to especially acknowledge the invaluable support received by the dedicated staff of UNRWA. The Mission expresses its gratitude to the United Nations security personnel and interpreters, who have professionally and sensitively accomplished their difficult tasks. In addition to the secretariat of the Mission appointed by OHCHR, a multinational team with a broad range of professional experience, the gratitude of the Mission goes also to the staff of OHCHR in Geneva, the Occupied Palestinian Territory and New York. A particular mention

goes to all those who assisted with the daunting task of organizing at very short notice the public hearings in Gaza and in Geneva. The Mission wishes to formally thank the Government of Egypt and in particular the Permanent Mission of Egypt in Geneva. The Mission wishes to formally thank the Governments of Jordan and of Switzerland for facilitating the issuance of entry visas at short notice. The Mission also wishes to acknowledge the continued support received from the United Nations Secretary-General.

150. Finally, the Mission wishes to thank the people of Gaza for their warm welcome, their humanity and their hospitality in spite of such difficult and painful circumstances.

I. METHODOLOGY

A. Mandate and terms of reference

151. In his letter appointing the members of the Mission, the President of the Council entrusted the Mission with the following mandate: "to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after."

152. To implement its mandate, the Mission determined that it was required to consider any actions by all parties that might have constituted violations of international human rights law or international humanitarian law. The mandate also required it to review related actions in the entire Occupied Palestinian Territory and Israel.

153. With regard to temporal scope, the Mission's broad mandate includes violations before, during and after the military operations that were conducted in Gaza between 27 December 2008 and 18 January 2009. The Mission considered that, while the Gaza events must be seen in the context of the overall conflict and situation in the Occupied Palestinian Territory, in view of the limited time and resources available, it would be beyond its abilities to focus on conduct or actions that took place long before the military operation of December–January. The Mission therefore decided to focus primarily on events, actions or circumstances occurring since 19 June 2008, when a ceasefire was agreed between the Government of Israel and Hamas. The Mission has also taken into consideration matters occurring after the end of military operations that constitute continuing human rights and international humanitarian law violations related to or as a consequence of the military operation, up to 31 July 2009.

154. The Mission considered that the reference in its mandate to violations committed in the context of the December–January military operations required it to go beyond violations that took place directly as part of the operations. Thus violations within its mandate include those that are linked to the December–January military operations in terms of time, objectives and targets, and include restrictions on human rights and fundamental freedoms relating to Israel's strategies and actions in the context of its military operations.

155. The normative framework for the Mission has been general international law, the Charter of the United Nations, international humanitarian law, international human rights law and international criminal law.

B. Methods of work

156. The Mission reviewed all allegations raised in connection with issues under its mandate. The review included analysis of material in the public domain, including the many reports produced after the military operations concluded, information provided to the Mission through additional documentation and a series of meetings with experts who had been to the area or studied matters of interest to the Mission.

157. In view of the time frame within which it had to complete its work, the Mission necessarily had to be selective in the choice of issues and incidents for investigation. The report does not purport to be exhaustive in documenting the very high number of relevant incidents that occurred in the period covered by the Mission's mandate and especially during the military operations in Gaza. Nevertheless, the Mission considers that the report is illustrative of the main patterns of violations. The Mission also stresses that the exclusion of issues or incidents from the report in no way reflects on the seriousness of the relevant allegations.

158. The Mission based its work on an independent and impartial analysis of compliance by the parties with their obligations under international human rights and humanitarian law in the context of the recent conflict in Gaza, and on international investigative standards developed by the United Nations.

159. The Mission adopted an inclusive approach to receiving information and views on matters within its mandate. Information-gathering methods included:

(a) The review of reports of international organizations, including the United Nations; reports and other documentation, including affidavits, produced by non-governmental and civil society organizations (Palestinian, Israeli and international); media reports; and writings of academics and analysts on the conflict;

(b) Interviews with victims, witnesses and other persons having relevant information. In keeping with established human rights methodology and in order to ensure both the safety and privacy of the interviewees and the integrity of the information provided, such interviews were conducted in private. The Mission decided not to interview children. The Mission conducted 188 individual interviews. Most interviews were conducted in person. If the Mission was unable to meet the relevant persons, interviews were conducted by telephone. Also in keeping with normal practice for this type of report and to continue to protect their safety and privacy, the names of the victims, witnesses and other sources are generally not explicitly referred to in the report and codes are used instead. The names of individuals who publicly testified at the hearings held by the Mission or who have explicitly agreed to be named (see below) are, however, identified;

(c) Site visits to specific locations in Gaza where incidents had occurred. The Mission investigated 36 incidents in Gaza;

(d) The analysis of video and photographic images, including satellite imagery provided by UNOSAT, and expert analysis of such images;

(e) The review of medical reports about injuries to victims;

(f) The forensic analysis of weapons and ammunition remnants collected at incident sites;

(g) Meetings with a variety of interlocutors, including members of the diplomatic community, representatives of the parties concerned, NGOs, professional associations, military analysts, medical doctors, legal experts, scientists, United Nations staff;

(h) Invitations, through notes verbales, to United Nations Members States and United Nations agencies, departments and bodies to provide information relating to the Mission's investigation requirements;

(i) The wide circulation of a public call for written submissions from NGOs and other organizations and individuals interested in bringing information to the attention of the Mission. As a result, it received numerous submissions from organizations and individuals from Israel, the Occupied Palestinian Territory and elsewhere in the world;

(j) Public hearings in Gaza and in Geneva[4] to hear: (i) victims and witnesses of violations; and (ii) individuals with specialized knowledge and expertise on the context and impact of the hostilities.

160. The Mission reviewed more than 300 reports, submissions and other documentation either researched of its own motion, received in reply to its call for submissions and notes verbales or provided during meetings or otherwise, amounting to more than 10,000 pages, over 30 videos and 1,200 photographs.

161. The methods adopted to gather and verify information and reach conclusions were for the most part guided by best practice methodology developed in the context of United Nations investigations. In the case of Israel and the West Bank, adjustments were required in view of the Mission's inability to access those areas due to lack of cooperation from Israel.

162. The Mission's preferred option would have been to visit all areas covered by its mandate and undertake on-site investigations in all. The Government of Israel, however, refused to cooperate with the Mission at three levels: (a) it refused to meet the Mission and to provide access to Government officials, including military, and documentation; (b) it precluded the Mission from travelling to Israel in order to meet with Israeli victims, witnesses, members of civil society and NGOs; and (c) it prevented the Mission from travelling to the West Bank, including East Jerusalem, to meet members of the Palestinian Authority and Palestinian victims, witnesses, non-governmental or civil society organizations living or located in the West Bank.

163. Accordingly, the Mission conducted field visits, including investigations of incident sites, in the Gaza Strip. This allowed the Mission to observe first-hand the situation on the ground, and speak to many witnesses and other relevant persons. The Mission considered this particularly important to form an understanding of the situation, the context, impact and consequences of the conflict on people, and to assess violations of international law.

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[4] The public hearings are webcast by the United Nations and can be viewed by visiting the webcast archive at: http://www.un.org/webcast/unhrc/archive.asp?go=090628.

164. The Mission gathered first-hand information with regard to the situation in Israel and in the West Bank by conducting telephone interviewees with victims, community representatives, local authorities, members of NGOs and experts; by hearing testimonies from victims, witnesses and experts from Israel and from the West Bank at the public hearings in Geneva; and by holding meetings and private interviews both in Amman and in Geneva.

165. The Mission's efforts in this regard were partially thwarted because of restrictions on the freedom of movement of some of the people that the Mission wished to interview. The Mission was not able to meet as planned the Palestinian Minister of Justice, Dr. Ali al-Khashan, in Amman, as he was not allowed by Israel to leave the West Bank. The Mission was also unable to meet Ms. Khalida Jarrar, a member of the Palestinian Legislative Council, who is subject to a travel ban by Israel (see chap. XXII). It held a teleconference with her. A Palestinian witness at the Geneva public hearings, Mr. Shawan Jabarin, had to be heard by videoconference as he is also subject to a travel ban by Israel.

A note on the public hearings

166. The purpose of the public hearings, which were broadcast live, was to enable victims, witnesses and experts from all sides to the conflict to speak directly to as many people as possible in the region as well as in the international community. The Mission is of the view that no written word can replace the voice of victims. While not all issues and incidents under investigation by the Mission were addressed during the hearings, the 38 public testimonies covered a wide range of relevant facts as well as legal and military matters. The Mission had initially intended to hold hearings in Gaza, Israel and the West Bank. However, denial of access to Israel and the West Bank resulted in the decision to hold hearings of participants from Israel and the West Bank in Geneva.

167. Participants in the hearings were identified in the course of the Mission's investigations, and had either first-hand experience or information or specialized knowledge of the issues under investigation and analysis. In keeping with the objectives of the hearings, the Mission gave priority to the participation of victims and people from the affected communities. Participants took part in the hearings on a voluntary basis. Some individuals declined to participate for fear of reprisal. The Mission received expressions of gratitude from participants, as well as members of the affected communities, for having provided an opportunity to speak publicly of their experiences.

C. Assessment of information

168. In establishing its findings, the Mission sought to rely primarily and whenever possible on information it gathered first-hand, including through on-site observations, interviews and meetings with relevant persons. Information produced by others, including reports, affidavits and media reports, was used primarily as corroboration.

169. The section of the report on the Gaza Strip is based on first-hand information gathered and verified by the Mission. To assess the situation in Israel and in the West Bank, the Mission had to make comparatively greater use of information produced by others for the reasons explained above. These sections too, however, include first-hand information directly gathered and verified by the Mission.

170. The Mission met or spoke with witnesses, listened to what they had to say and questioned them wherever necessary. Taking into account the demeanour of witnesses, the plausibility of their accounts and the consistency of these accounts with the circumstances observed by it and with other testimonies, the Mission was able to determine the credibility and reliability of those people it heard. Regarding the large amount of documentary information the Mission received or had access to as documents in the public domain, it tried as far as possible to speak with the authors of the documents in order to ascertain the methodologies used and to clarify any doubts or problems.

171. The final conclusions on the reliability of the information received were made taking all of these matters into consideration, cross-referencing the relevant material and information, and assessing whether, in all the circumstances, there was sufficient information of a credible and reliable nature for the Mission to make a finding in fact.

172. On the basis set out above, the Mission has, to the best of its ability, determined what facts have been established. In many cases it has found that acts entailing individual criminal responsibility have been committed. In all of these cases the Mission has found that there is sufficient information to establish the objective elements of the crimes in question. In almost all of the cases the Mission has also been able to determine whether or not it appears that the acts in question were done deliberately or recklessly or in the knowledge that the consequence that resulted would result in the ordinary course of events, that is, the Mission has referred in many cases to the relevant fault element (mens rea). The Mission fully appreciates the importance of the presumption of innocence: the findings in the report do not subvert the operation of that principle. The findings do not attempt to identify the individuals responsible for the commission of offences nor do they pretend to reach the standard of proof applicable in criminal trials.

D. Consultation with the parties

173. The Mission received documentation related to its mandate from the Palestinian Authority. During its visits in Gaza, the Mission was provided with significant material and documentation by the Gaza authorities. On 29 July, it received, through UN Watch, a paper[5] on the military operations in Gaza that sets out the Government of Israel's position on many issues investigated by the Mission.

174. During its meetings in Gaza, Amman and Geneva, the Mission discussed matters within its mandate with Palestinian counterparts. While no cooperation was received from the Government of Israel, the Mission met a number of Israeli citizens formerly in senior Government positions.

175. In order to provide the parties concerned with an opportunity to submit additional relevant information and express their position and respond to allegations, the Mission also submitted comprehensive lists of questions to the Government of Israel, the Palestinian Authority and the

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[5] "The operation in Gaza: Factual and legal aspects", July 2009, published on the website of the Israeli Ministry of Foreign Affairs, available at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Operation_in_Gaza-Factual_and_Legal_Aspects.htm.

Gaza authorities in advance of completing its analysis and findings. The Mission received replies from the Palestinian Authority and the Gaza authorities but not from Israel.

II. CONTEXT

176. The Mission is of the view that the events that it was mandated to investigate should not be considered in isolation. They are part of a broader context, and are deeply rooted in the many years of Israeli occupation of the Palestinian Territory and in the political and violent confrontation that have characterized the history of the region. A review of the historical, political and military developments between the Six-Day War in 1967 and the announcement of the "period of calm" (*Tahdiyah)* in June 2008,[6] and of Israeli policies towards the Occupied Palestinian Territory is necessary to consider and understand the events that fall more directly within the scope of the Mission's mandate.

A. Historical context

177. The West Bank, including East Jerusalem, and the Gaza Strip were captured by Israel following the Six-Day War of June 1967. The two non-contiguous areas had been administered by Jordan and Egypt, respectively, since the establishment of the "Green Line" along the 1949 Armistice demarcation, separating the newly founded State of Israel and its neighbours. After 1967, the two areas were administered directly by military commanders until 1981 and since then through a "Civil Administration" established by the Israeli armed forces. "Military orders" were used to rule the civil affairs of the Palestinian population superimposing and often revoking pre-existing Jordanian laws in the West Bank and Egyptian laws in the Gaza Strip. East Jerusalem was annexed to the Israeli municipality of the city and in 1980 the Knesset passed a law which declared that "Jerusalem, complete and united, is the capital of Israel". With Security Council resolution 478 (1980), the United Nations declared this law "null and void", condemning any attempt to "alter the character and status of Jerusalem".[7] No member of the United Nations, apart from Israel, recognizes the annexation of East Jerusalem.

178. After the Likud party won the 1977 Israeli elections, the establishment of settlements within the occupied territories of the West Bank and the Gaza Strip dramatically accelerated, and the expropriation of Palestinian lands and the construction of settlements have continued unabated to this day. Many years of growing tension and violence concerning the unresolved status of the Palestinian territory occupied by Israel ensued. In 1987 a widespread popular uprising – the intifada – was forcefully repressed by the Israeli security forces but lasted until 1993, when the leadership of the Palestine Liberation Organization (PLO) and the Government

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[6] Due to obvious space limitations, the historical context does not make reference to the numerous important events that took place during this period (such as the 1973 War, the Camp David Accords, the peace treaty with Jordan, the 2006 Lebanon War and many others).

[7] Adopted by 14 votes to none, with 1 abstention (United States of America).

of Israel agreed to recognize each other and signed the "Declaration of Principles on Interim Self-Government Arrangements" also known as the "Oslo I Accord".[8]

179. In 1994 the Palestinian Authority was established following the Oslo I Accord and in 1995 "the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip", also known as "Oslo II",[9] detailed practical steps to be implemented by the parties in view of the negotiations on the final status of the territory. The assassination of Israeli Prime Minister Yitzhak Rabin by an Israeli extremist in 1995 dealt a lethal blow to the peace process. Successive Israeli Governments and the Palestinian political leadership failed to reach an agreement on the final status at the United States-sponsored Camp David summit in 2000 and during direct talks in Taba (Egypt) in 2001.

180. A second popular uprising erupted in September 2000, after the then opposition leader Ariel Sharon conducted a controversial visit to the Temple Mount/al-Haram al-Sharif in Jerusalem.[10] This second intifada set off an unprecedented cycle of violence.

181. According to independent sources, while the Israeli-Palestinian conflict claimed the lives of 1,549 Palestinians and 421 Israelis between 1987 and 2000,[11] between September 2000 and December 2008, 5,500 Palestinians were killed (593 as result of intra-Palestinian violence) as well as 1,062 Israelis and 64 foreigners.[12]

182. According to Israel's Ministry of Foreign Affairs, 154 suicide bomb attacks against Israeli civilians and military personnel took place between 1993 and 2007. They killed 542 individuals,

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[8] The Agreement contained a specific provision for the establishment of a "strong police force" to "guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip". See http://www.reliefweb.int/rw/rwb.nsf/db900SID/MHII-62DANP?OpenDocument.

[9] The Agreement defined three areas of jurisdiction in Gaza and the West Bank: area "A", in which Palestinians would have full administrative and security responsibilities; area "B", in which Palestinians would have administrative responsibilities, but Israelis would retain security control; and area "C", where Israelis would maintain administrative and security responsibilities. See http://www.reliefweb.int/rw/rwb.nsf/db900SID/MHII-62DAP5?OpenDocument.

[10] Situated at the heart of the Old City in East Jerusalem, the site is of religious significance to both Muslims and Jews. The Temple Mount/al-Haram al-Sharif (the Noble Sanctuary) is the location of al-Aqsa and the Dome of the Rock mosques, the third most sacred place in Islam. It is also believed to be the location of the two ancient Jewish temples. The southern section of its western external perimeter is what is known as the Western Wall. Haram al-Sharif is administered by an Islamic trust (Waqf) and religious rituals performed there by non-Muslims are forbidden.

[11] See B'Tselem statistics ("Fatalities in the first Intifada"), available at: http://www.btselem.org/English/Statistics/First_Intifada_Tables.asp.

[12] See B'Tselem statistics ("Fatalities"), available at: http://www.btselem.org/English/Statistics/Casualties.asp

with a peak in 2002 of 220 individuals killed in 55 suicide attacks.[13] The last recorded suicide attack took place in February 2008 in the Israeli city of Dimona.[14]

183. The firing of rockets and mortars from Gaza into Israel began in 2001.[15] Israeli sources report that as many as 3,455 rockets and 3,742 mortar shells were fired into Israel from Gaza until mid-June 2008.[16]

184. After his election as Prime Minister in 2001, the Likud leader Ariel Sharon discontinued any direct contacts with the Palestinian leadership, in effect putting an end to talks on the final status.

185. In June 2002, the beginning of the construction of the separation Wall, which encroached on Palestinian land to encompass most Israeli settlement areas in the West Bank as well as East Jerusalem, left almost half a million Palestinians on the western side of the divide, cutting historical, social, cultural and economic ties with the rest of the Palestinians in the West Bank.[17] In 2004, the International Court of Justice issued an advisory opinion on the legality of the Wall being built by Israel, at the request of the United Nations General Assembly. The Court stated that Israel must cease construction of the barrier, dismantle the parts of the barrier that were built inside the West Bank, revoke the orders issued relating to its construction and compensate the Palestinians who suffered losses as a result of the barrier.[18] Israel disregarded the views of the Court and construction of the Wall continued. In 2004 and 2005, the Israeli Supreme Court, sitting as the High Court of Justice (see sect. D below), ruled that some parts of the route of the Wall violated the principle of "proportionality"in both Israeli and international law, causing harm to an "occupied population" and that the construction of the structure should be done in a way to lessen the prejudicial impact on the rights of the resident Palestinians. The Israeli Court

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[13] See website of the Ministry of Foreign Affairs ("Suicide and other bombing attacks in Israel since the Declaration of Principles (Sept. 1993)"), available at: http://www.mfa.gov.il/MFA/Terrorism-%20Obstacle%20to%20Peace/Palestinian%20terror%20since%202000/Suicide%20and%20Other%20Bombing%20Attacks%20in%20Israel%20Since

[14] BBC News, "Israeli killed in suicide bombing", 4 February 2008, available at: http://news.bbc.co.uk/2/hi/middle_east/7225775.stm

[15] "The operation in Gaza…" states that the firing of rockets and mortars from Gaza started in 2000. The same sources quoted in the report, however, put the beginning of the firing of rockets and mortars in 2001. The report states that between 2000 and 2008 "Israel was bombarded by some 12,000 rockets and mortar shells between 2000 and 2008, including nearly 3,000 rockets and mortar shells in 2008 alone."

[16] Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center, "Rocket threat from the Gaza Strip, 2000-2007", December 2007, available at: http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/html/rocket_threat_e.htm; and "Summary of rocket fire and mortar shelling in 2008", January 2009, available at: http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/ipc_e007.pdf

[17] See B'Tselem statistics (Separation barrier statistics), available at: http://www.btselem.org/English/Separation_Barrier/Statistics.asp.

[18] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004.

ordered the rerouting of different portions of the Wall,[19] but considered the structure legal in principle.[20]

186. In 2002, the so-called Quartet (the United States, the European Union, the Russian Federation and the United Nations) proposed a plan to resolve the Israeli-Palestinian conflict. The plan came to be known as the "road map to peace."[21] The road map envisaged that the Palestinians would engage in democratic reforms and renounce violent means and that Israel would accept a Palestinian Government and cease settlement activities. Fulfilment of the road map's commitments would lead to negotiations on the final status. The road map remains unimplemented. The same year, the League of Arab States adopted a proposal that Saudi Arabia presented at the Beirut Summit in which its members pledged to establish normal relations with Israel in the context of a comprehensive peace that would establish a Palestinian State within the border of 1967.[22]

187. On 6 June 2004, the Israeli Cabinet adopted a "disengagement plan" providing for the unilateral removal from the Gaza Strip of Israeli security forces and Israeli civilians living in settlements. The plan was endorsed by the Knesset on 26 October of the same year. With the evacuation of all Israeli residents and associated security personnel from the Gaza Strip completed on 12 September 2005, Israel declared that "there will be no basis for claiming that the Gaza Strip is occupied territory" (on the continued occupation, see chapter IV). Under the disengagement plan, however, the Israeli armed forces continued to maintain control over Gaza's borders, coastline and airspace, and Israel reserved "its inherent right of self-defence, both preventive and reactive, including where necessary the use of force, in respect of threats emanating from the Gaza Strip." Israel removed both settlements and military bases protecting the settlers from the Gaza Strip, redeploying on Gaza's southern border and repositioning its forces to other areas just outside the Gaza Strip. In addition to controlling the borders, coastline and airspace, after the implementation of the disengagement plan, Israel continued to control Gaza's telecommunications, water, electricity and sewage networks, as well as the population registry, and the flow of people and goods into and out of the territory while the inhabitants of Gaza continued to rely on the Israeli currency.[23]

188. After years of disassociation from the Oslo process, Hamas changed its position about the legitimacy of the Palestinian Authority and decided to participate in the elections of January

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[19] Many of these rulings have had only a marginal impact on the Palestinian population.

[20] The Court opened its deliberation by stating that "since 1967, Israel has been holding the areas of Judea and Samaria […] in belligerent occupation", see Beit Sourik Village Council v. The Government of Israel and Commander of the IDF Forces in the West Bank, case No. 2056/04, Judgement of 30 June 2004 and Mara'abe et al. v. The Prime Minister of Israel et al., case No. 7957/04, Judgement of 15 September 2005.

[21] "A performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict", available at: http://www.un.org/news/dh/mideast/roadmap122002.pdf

[22] Available at: http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/5a7229b652beb9c5c1256b8a0054b62e

[23] See "Disengagement Plan - General Outline", 15 April 2004, available at: http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2004/Disengagement+Plan/Disengagement+Plan.htm; and "Overall concept of the Disengagement Plan", 15 April 2004, available at: http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2004/Disengagement+Plan/DisengagementPlan.htm.

2006. The List of Change and Reform, of which Hamas represented the main component, won the elections for the Palestinian Legislative Council and formed a Government. Shortly thereafter, the international community redirected international aid from the Palestinian Authority to international organizations and humanitarian agencies, isolating the new Palestinian executive in a stated effort to put pressure on it to accept the so-called Quartet Principles. The Quartet had already announced that, to be recognized by the international community, any Palestinian Government should adhere to three "Principles": (i) recognition of the State of Israel, (ii) recognition of previous agreements and (iii) renunciation of violence.[24] Israel also imposed economic sanctions on the Hamas-led Palestinian Authority Government, including by withholding tax revenues it collected on imports and introducing additional restrictions on the movement of goods to and from the Gaza Strip. Israel declared that sanctions would be lifted only when the new Palestinian Government would abide by the Quartet Principles.[25]

189. In June 2006, a squad drawn from three groups – the Popular Resistance Committees, al-Qassam Brigades and the until then unknown Army of Islam – excavated a tunnel under the Gaza-Israel border and attacked the military base of Kerem Shalom inside Israel, blowing up a tank, killing two soldiers and capturing a third, Corporal Gilad Shalit. In reaction to the capture, the Israeli Government conducted a number of targeted assassinations of alleged militants belonging to Hamas and other groups; arrested Palestinian Authority cabinet ministers, Hamas parliamentarians and other leaders in the West Bank; attacked key civilian infrastructure in the Gaza Strip, such as the main power plant, the main bridge in central Gaza and Palestinian Authority offices; tightened the economic isolation; and carried out major armed thrusts into the Gaza Strip for the first time since August 2005.[26]

190. After the refusal of the politically defeated Fatah movement to cede the control of Palestinian Authority institutions and specifically security institutions to the new Government, armed clashes erupted between the two political groups both in the Gaza Strip and the West Bank. In February 2007, Palestinian leaders assembled in Mecca signed an agreement sponsored by Saudi Arabia that led to the formation of a coalition Government that was approved by the Palestinian Legislative Council in March.[27] The coalition Government was headed by Hamas and included members of other political movements, including Fatah, as well as independents. After only four months, violent clashes erupted again between armed and security forces loyal to Fatah and Hamas. By 14 June 2007, Hamas forces and armed groups had seized all Palestinian

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[24] See "Briefing to the Security Council on the situation in the Middle East", by Ms Angela Kane, Assistant Secretary-General for Political Affairs, 31 January 2006, available at: http://www.unsco.org/Documents/Statements/MSCB/2008/January%2031.pdf

[25] In June 2006, Hamas subscribed to the so-called Prisoners Document, a common political platform shared by Fatah, Hamas, Islamic Jihad, the Popular Front for the Liberation of Palestine (PFLP) and the Democratic Front for the Liberation of Palestine (DFLP). An implicit recognition of the State of Israel could be traced to the statement that "the right to establish their independent state with al-Quds al-Sharif as its capital on all territories occupied in 1967". See http://www.miftah.org/Display.cfm?DocId=10371&CategoryId=32.

[26] See International Crisis Group, "Israel/Palestine/Lebanon: Climbing out of the abyss", Middle East Report N° 57, 25 July 2006.

[27] See "Briefing to the Security Council on the situation in the Middle East", by Mr B. Lynn Pascoe, 25 April 2007, available at: http://www.unsco.org/Documents/Statements/MSCB/2007/April%202007.pdf.

Authority security installations and government buildings in the Gaza Strip.[28] The President of the Palestinian Authority dismissed the Hamas-led Government (hereinafter called the Gaza authorities), declared a state of emergency and established an emergency Government based in the West Bank, which was largely recognized by the international community.[29]

191. In November 2007, the United States of America sponsored the organization of a new comprehensive peace conference. At the Conference – held in Annapolis, Maryland, United States of America – the Palestinian President and the Israeli Prime Minister agreed to resume negotiations by the end of 2007. In addition, they agreed to work continuously to reach a two-State solution by the end of 2008.

192. On 19 September 2007, the Government of Israel declared Gaza "hostile territory."[30] This was followed by the imposition of further severe reductions in the transfer of goods and supplies of fuel and electricity to the Strip. Since then, Israel has only sporadically allowed the opening of all the crossings into the Gaza Strip, at times completely closing them.[31] (See also chapter V.)

193. Israeli military operations in Gaza and the West Bank started well before the so-called disengagement of 2005. "Operation Defensive Shield" in 2002 was the largest military operation in the West Bank since the 1967 Six-Day War. It began with an incursion into Ramallah, placing the then President of the Palestinian Authority, Yasser Arafat, under siege in his offices, and was followed by incursions into the six largest cities in the West Bank and their surrounding localities. During the three weeks of the military incursions in areas that were under the direct control of the Palestinian Authority, 497 Palestinians were killed.[32] The siege on the half destroyed Ramallah *Muqataa* compound of President Arafat was lifted only at the end of 2004 when he was flown to Paris to undergo medical treatment. He later died there.

194. "Operation Rainbow" of 2004 targeted the Rafah area of the Gaza Strip and left about 50 Palestinians dead. "Operation Days of Penitence" was carried out between September and October 2004. According to the Israeli Government, it was launched in retaliation for the firing of rockets against the town of Sderot and Israeli settlements inside the Gaza Strip. It targeted the towns of Beit Hanoun and Beit Lahia and the Jabaliyah refugee camp and resulted in the deaths of more than 100 Palestinians and 5 Israelis.

195. From the disengagement until November 2006, the Israeli armed forces fired approximately 15,000 artillery shells and conducted more than 550 air strikes into the Gaza Strip. Israeli military attacks killed approximately 525 people in Gaza. Over the same period, at

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[28] See International Crisis Group, "After Gaza", Middle East Report N°68, 2 August 2007. See also Vanity Fair, "The Gaza bombshell", April 2008, available at: http://www.vanityfair.com/politics/features/2008/04/gaza200804

[29] For reactions in support of the emergency Government by the United States, the European Union and Arab States, see "After Gaza…".

[30] "Security cabinet declares Gaza hostile territory", 19 September 2007, and "Behind the headlines: Israel designates Gaza a 'hostile territory'", 24 September 2007, available from the website of Israel's Ministry of Foreign Affairs at www.mfa.gov.il

[31] A/HRC/7/76.

[32] A/ES-10/186.

least 1,700 rockets and mortars were fired into Israel by Palestinian militants, injuring 41 Israelis. The conflict culminated, in 2006, in the Israeli military incursions into Gaza, codenamed "Summer Rains" and "Autumn Clouds", the latter focusing on the north of the Strip around the town of Beit Hanoun, where shortly after the end of the military operations in November, 19 people, of whom 18 of the same family, were killed by artillery fire in one incident.[33]

196. In February 2008, a rocket attack from Gaza hit the Israeli city of Ashkelon causing light injures. The Israeli armed forced launched an operation codenamed "Hot Winter" during which the air force conducted at least 75 air strikes on different targets within the Gaza Strip. As a result of the military operation, more than 100 Palestinians and 2 Israelis were killed in Gaza.[34]

197. In June 2008, an informal "period of calm" (*Tahdiyah*) of six months was agreed through Egypt's mediation. (For more details, see chapter III.)

B. Overview of Israel's pattern of policies and conduct relevant to the Occupied Palestinian Territory, and links between the situation in Gaza and in the West Bank

198. Since1967, Israel has built hundreds of settlements in the West Bank, including East Jerusalem, and the Gaza Strip. Such settlements were recognized by its Ministry of Interior as Israeli "communities" subjected to Israeli law. The above-mentioned Advisory Opinion by the International Court of Justice advisory opinion and "a number of United Nations resolutions have all affirmed that Israel's practice of constructing settlements – in effect, the transfer by an occupying Power of parts of its own civilian population into the territory it occupies – constitutes a breach of the Fourth Geneva Convention"[35] (on the position of the Israeli High Court of Justice on the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, see chapter IV). Sixteen settlements in the Gaza Strip and three in the northern West Bank were dismantled in 2005 during the implementation of the so-called Israeli disengagement plan, but the establishment of new settlements continued. In 2007, there were more than 450,000 Israeli citizens living in 149 settlements in the West Bank, including East Jerusalem. According to United Nations sources, almost 40 per cent of the West Bank is now taken up by Israeli infrastructure associated with the settlements, including roads, barriers, buffer zones and military bases. Data released by the Israeli Central Bureau of Statistics showed that construction in these settlements has increased in 2008 by a factor of 1.8 in comparison with the same period in 2007. The number of tenders in East Jerusalem has increased by 3,728 per cent (1,761 housing units, compared with 46 in 2007). Until the end of the 1970s, the Government of Israel claimed that the settlements were established on the grounds of military necessity and security, but it has since abandoned this position.[36]

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[33] A/HRC/9/26.

[34] A/HRC/8/17.

[35] A/63/519.

[36] Ibid.

199. It is estimated that 33 per cent of the settlements have been built on private land owned by Palestinians, much of it expropriated by the State of Israel on asserted grounds of military necessity. Following a ruling of the Israeli High Court of Justice in 1979, the Government of Israel changed its policy of land confiscation on the asserted ground of military necessity and started having recourse to civil laws relating to land confiscation in place under Ottoman rule. According to these laws, land may be seized either because no one can prove ownership in accordance with the required standard of evidence or because the area in which it is situated is declared a closed military zone which farmers are prohibited from entering.[37]

200. "Since 1967, the Israeli authorities have demolished thousands of Palestinian-owned structures in the [Occupied Palestinian Territory], including an estimated 2,000 houses in East Jerusalem."[38] During the first quarter of 2008, the Israeli authorities demolished 124 structures in the West Bank, including East Jerusalem, for lack of permits. Of those, 61 were residential buildings whose demolition caused the displacement of many Palestinians, including children. Demolition of structures and residential buildings has been a feature of the Israeli policy that has displaced Palestinians mainly in the Jordan Valley and in East Jerusalem, but also in other areas of the West Bank. The Israeli authorities justify the majority of these demolitions by claiming that the structures or buildings lack the necessary permits. The relevant Israeli authorities rarely issue building permits for Palestinians, frequently refusing them on the basis that the construction is in violation of the mandatory regional outline plans approved by the British Mandate Government of Palestine in the 1940s.[39] Areas in East Jerusalem face the prospect of mass demolitions. Carrying out pending demolition orders would affect a combined total of more than 3,600 persons.[40] The combined effects of the Israeli policies of expanding and establishing new settlements, the demolition of Palestinian-owned properties, including houses, the restrictive and discriminatory housing policies as well as the Wall have been described as a way of "actively pursuing the illegal annexation" of East Jerusalem.[41]

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[37] Ibid.

[38] Office for the Coordination of Humanitarian Affairs (OCHA), "The planning crisis in East Jerusalem: Understanding the phenomenon of 'illegal' construction", Special Focus, April 2009, available at http://www.ochaopt.org/documents/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf

[39] A/63/518.

[40] OCHA, Special Focus, April 2009.

[41] The Guardian, "Israel annexing East Jerusalem, says EU", 7 March 2009, available at http://www.guardian.co.uk/world/2009/mar/07/israel-palestine-eu-report-jerusalem

201. The route of the Wall weaves between Palestinian villages and neighbourhoods and has contributed to the fragmentation of the West Bank into a series of enclaves separated from one another (see map[42] below). The Wall encircles settlements built around Jerusalem and within the West Bank and connects them to Israel. Eighty per cent of Israeli inhabitants of these settlements reside to the west of the Wall. The route of the Wall, which has created a demarcation, is to a great degree determined by the objective of incorporating settlements into the Israeli side and to exclude Palestinians from these areas.[43] If completed, 85 per cent of the Wall will be located inside the West Bank, and 9.5 per cent of West Bank territory, including East Jerusalem, will be cut off from the rest of the West Bank. It is estimated that 385,000 Israeli citizens in 80 settlements out of the total of 450,000 Israeli citizens in 149 settlements and 260,000 Palestinians, including in East Jerusalem, will be located between the Wall and the Green Line. In addition, approximately 125,000 Palestinians in 28 communities will be surrounded on three sides and 26,000 Palestinians in eight communities will be surrounded on four sides.[44] A number of surveys compiled by United Nations agencies[45] found that many Palestinian communities cut off by the Wall do not enjoy full access to emergency health services, posing severe challenges in medical emergencies and for expectant mothers. In addition the Wall cuts off residents in closed areas from schools and universities, also having an impact on social relations and especially on traditional marriage patterns. The Wall isolates the land and water resources of a large number of Palestinians, having a negative impact on agricultural practices and on rural livelihoods.

202. Despite the claim by Israel that restrictions of movement within the West Bank are imposed on Palestinian residents for security purposes, most of those internal restrictions appear to have been designed to guarantee unobstructed travel to the Israeli inhabitants of the settlements. None of these restrictions applies to Israeli citizens travelling throughout the West Bank.[46]

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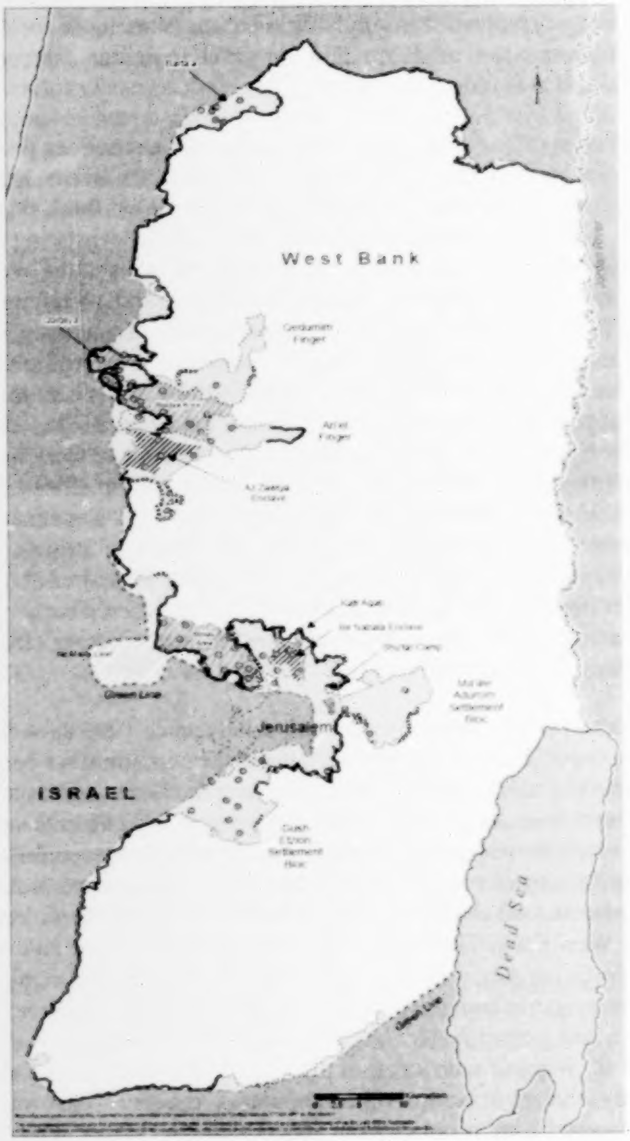
[42] OCHA, "West Bank barrier route projections", July 2008, available at: http://www.ochaopt.org/documents/BarrierRouteProjections_July_2008.pdf

[43] A/63/519.

[44] OCHA, "Five years after the International Court of Justice Advisory Opinion: A summary of the humanitarian impact of the barrier", July 2009 (Updated August 2009), available at: http://www.ochaopt.org/documents/ocha_opt_barrier_report_july_2009_english_low_res.pdf.

[45] OCHA and UNRWA surveys quoted in OCHA Special Focus, – "Three years later: The humanitarian impact of the barrier since the International Court of Justice Opinion", 9 July 2007, available at: http://www.ochaopt.org/documents/ICJ4_Special_Focus_July2007.pdf.

[46] A/63/519.


West Bank
Qedumim Finger
Ariel Finger
Az Zawiya Enclave
Kafr Aqab
Bir Nabala Enclave
Shu'fat Camp
Ma'ale Adumim Settlement Bloc
Green Line
Jerusalem
ISRAEL
Gush Etzion Settlement Bloc
Dead Sea
Green Line

203. A two-tiered road system has been established throughout the West Bank in which main roads are reserved for the exclusive use of Israeli citizens while Palestinians are confined to a different (and inferior) road network. The Israeli-built roads in the West Bank form a network linking Israeli settlements with one another and to Israel proper. Palestinians are denied free access to approximately 1,500 km of roads within the West Bank.[47] Travel on these roads by

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[47] Most prohibited roads comprise the major north-south and east-west routes in the West Bank. These are reserved for settlers, Israeli security forces and non-Palestinian international passport holders, including international United Nations staff

Palestinians is completely forbidden. Partially prohibited roads are those for which a special permit is required, while restricted roads are those on which individuals travelling on such roads who are not from the local area must have a permit.[48]

204. The policy of "closure", i.e. closures of entire areas and restrictions on the movement for goods and people on the basis of alleged security threats to Israeli citizens, has been a characteristic of the Israeli control over the Gaza Strip and the West Bank since 1996 and has dramatically affected the lives of Palestinians. "Perhaps the most devastating effect of the heightened closure has been a dramatic rise in unemployment levels in the West Bank and Gaza Strip. Because the closure restricts the movement of all people (and goods) in and out of the Gaza Strip and West Bank, as well as movement within the West Bank itself, workers from these territories have been unable to reach their places of employment. According to the Palestinian Ministry of Labour, unemployment in Gaza has increased from 50 per cent to 74 per cent (and from 30 per cent to 50 per cent in the West Bank). Before the heightened closure, 22,000 Gazans (down from 80,000 in 1987) and 26,000 West Bankers had permits to work in Israel." "Losses from unemployment amount to $1.04 million daily for the Gaza Strip alone – $750,000 from lost wages in Israel and $290,000 from lost wages in local sectors. The Palestinian Bureau of Statistics (PBS) estimates that from February 25 to April 4, the Gaza Strip and West Bank lost $78.3 million in wages and income."[49] In June 2009, more than 40 United Nations and other humanitarian agencies urged Israel to lift its blockade of Gaza, where nearly everyone depends on international humanitarian assistance, and indiscriminate sanctions are affecting the entire population of 1.5 million[50] (see also chap. V).

205. A number of Israeli policies and measures especially since 1996 have contributed to effectively separating Gaza from the West Bank, despite the commitments contained in the Oslo I Accord by which "the two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period." The imposition of tight closures and limitations on movement has chiefly contributed to this separation.[51] With the implementation of the "disengagement plan" and after Hamas secured control of the Gaza Strip, the imposition of an almost total closure has meant that direct contact is no longer possible with Palestinians from the West Bank. The arrest by Israel of members of the Palestinian Legislative Council and other Palestinian Authority officials has also resulted in the inability of many institutions to function properly and prevented Palestinians from the two areas to work together. In the past few years a new permit system has been imposed on Palestinians of the Gaza Strip living in the West Bank. Without such a permit they can be declared "illegal aliens". In addition, the Israeli authorities – who are in control of the population registry – have stopped updating the addresses of Palestinians who have moved from Gaza to the West Bank. The new requirement

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[48] A/63/519.

[49] Sara Roy, "Economic deterioration in the Gaza Strip", Middle East Report, No. 200 (Summer 2006), available at: http://www.merip.org/mer/mer200/roy.html.

[50] "UN, aid agencies call for end to Israel's two-year blockade of Gaza" (17 June 2009), available at: http://www.un.org/apps/news/story.asp?NewsID=31174&Cr=gaza&Cr1.

[51] "The total separation of the Gaza Strip from the West Bank is one of the greatest achievements of Israeli politics." See Amira Hass, "An Israeli achievement" (20 April 2009), available at: http://www.bitterlemons.org/previous/bl200409ed15.html#isr2.

for a permit is based on a person's registered address, enabling Israel to bar Palestinians whose registered address is in Gaza from moving to the West Bank. This measure has also retroactively turned many Palestinians who already live in the West Bank into illegal residents. These policies have had a devastating impact on many families that were effectively forced to live apart or, in order to live together, move to the Gaza Strip with no possibility of returning to the West Bank.[52] Israel has bureaucratically and logistically effectively split and separated not only Palestinians in the occupied territories and their families in Israel, but also Palestinian residents of Jerusalem and those in the rest of the territory and between Gazans and West Bankers/Jerusalemites.[53]

206. Despite prohibitions under international humanitarian law (IHL),[54] Israel has applied its domestic laws throughout the Occupied Palestinian Territory since 1967. Notably, existing planning and construction laws were annulled and replaced with military orders, and related civil powers transferred from local authorities to Israeli institutions, with ultimate discretion resting with military commanders.[55] The application of Israeli domestic laws has resulted in institutionalized discrimination against Palestinians in the Occupied Palestinian Territory to the benefit of Jewish settlers, both Israeli citizens and others. Exclusive benefits reserved for Jews derive from the two-tiered civil status under Israel's domestic legal regime based on a "Jewish nationality," which entitles "persons of Jewish race or descendency"[56] to superior rights and privileges, particularly in land use, housing, development, immigration and access to natural resources, as affirmed in key legislation.[57] Administrative procedures qualify indigenous inhabitants of the Occupied Palestinian Territory as "alien persons" and, thus, prohibited from building on, or renting, large portions of land designated by the Government of Israel as "State land".[58]

207. The two-tiered civil status under Israeli law, favouring "Jewish nationals" (*le'om yehudi*) over persons holding Israeli citizenship (*ezrahut*), has been a subject of concern under the International Covenant on Economic, Social and Cultural Rights, particularly those forms of discrimination carried out through Israel's parastatal agencies (World Zionist Organization/Jewish Agency, Jewish National Fund and their affiliates), which dominate land use, housing and development.[59] The Committee on Economic, Social and Cultural Rights also

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[52] B'Tselem and Hamoked, "Separated entities - Israel divides Palestinian population of West Bank and Gaza Strip", available at: http://www.btselem.org/Download/200809_Separated%20Entities_Eng.pdf.

[53] Amira Hass, op. cit.

[54] The Hague Regulations (art. 43).

[55] Order regarding the Towns, Villages and Buildings Planning Law (Judea and Samaria) (No. 418), 5731-1971 (QMZM 5732 1000; 5736 1422, 1494; 5741 246; 5742 718, 872; 5743, No. 57, at 50; 5744, No. 66, at 30), para. 8.

[56] Jewish National Fund, Memorandum of Association, art. 3 (c).

[57] For those holding "Jewish nationality" (as distinct from Israeli citizenship), special immigration rights and privileges are provided in the Basic Law: Law of Return (1950), as well as development and access to natural resources under the Basic Law: "Israel Lands" (1960).

[58] An alien person is defined as one who falls outside the following categories: (a) an Israeli citizen; (b) a person who has immigrated (to Israel) under the Basic Law: Law of Return; (c) someone who is entitled to the status of immigrant under the Law of Return, i.e. a Jew by descent or religion; (d) a company controlled by (a), (b) or (c).

[59] In 1998, the Committee on Economic, Social and Cultural Rights observed "with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish

has recognized that Israel's application of a "Jewish nationality" distinct from Israeli citizenship institutionalizes discrimination that disadvantages all Palestinians, in particular, refugees.[60]

208. In 2007, the Committee on the Elimination of Racial Discrimination highlighted another discriminatory policy imposed by the Israeli authorities on Palestinian residents of the Occupied Palestinian Territory as well as those who are Israeli citizens (but denied a legal "nationality" status).[61] The "Citizenship and Entry into Israel Law (Temporary Order)" of 31 May 2003 bars the possibility of granting Israeli citizenship and residence permits in Israel, including through family reunification, to residents of the Occupied Palestinian Territory. The Committee noted that such measures have a disproportionate impact on Arab Israeli citizens who marry Palestinians from the Occupied Palestinian Territory and wish to live together with their families in Israel. While noting the State party's legitimate objective of guaranteeing the safety of its citizens, the Committee expressed concern about the fact that these "temporary" measures have systematically been renewed and have been expanded to citizens of "enemy States".[62]

209. Since 1967, about 750,000 Palestinians have been detained at some point by the Government of Israel, according to Palestinian human rights organizations. Currently, there are approximately 8,100 Palestinian prisoners in Israeli prisons and detention centres, roughly 550 of whom are administrative detainees.[63] Administrative detention is detention without charge or trial, authorized by an administrative order rather than by judicial decree. The conditions of Palestinians in Israeli detention facilities have been the subject of considerable international criticism, including concerns of torture and other ill-treatment. Palestinian detainees can normally be visited only by first-degree relatives (see chapter XXI). However, following Hamas' seizure of full control in the Gaza Strip in June 2007, the Israeli authorities suspended visits from family members travelling from Gaza to Palestinian detainees in Israel, depriving more than 900 detainees of direct contact with their relatives.[64]

National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. […] large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant." (E/C.12/1/Add.27, para. 11).

[60] In its 2003 review, the Committee on Economic, Social and Cultural Rights also observed with particular concern that "the status of 'Jewish nationality,' which is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli Law of Return, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees." (E/C.12/1/Add.90, para. 18).

[61] The "Or" Commission, a panel appointed by the Israeli Government in 2000, found that Arab citizens suffer discrimination in Israel and levelled criticism at the Government for failing to give fair and equal attention to the needs of Arab citizens of Israel. See its full report at: http://elyon1.court.gov.il/heb/veadot/or/inside_index.htm (in Hebrew).

[62] CERD/C/ISR/CO/13.

[63] Mission's Public hearings, Geneva (7 July 2009). Testimony of Ms. Sahar Francis, Director of Addameer, available at: http://webcast.un.org/ramgen/ondemand/conferences/unhrc/gaza/gaza090707am1-eng.rm?start=00:00:00&end=00:47:46

[64] A/63/518.

C. Relevant political and administrative structures in the Gaza Strip and the West Bank

210. The Palestinian Legislative Council is the legislature of the Palestinian Authority; a unicameral body with 132 members, elected from 16 electoral districts in the West Bank and Gaza. Its initial composition, whose normal cycle is four years, was 88 members. In accordance with the Oslo Accords, the first Palestinian elections took place in 1996 under the supervision of international monitors. In 2000, a second round of planned elections did not take place due to the flaring-up of the second intifada. In January 2006, the second general polls took place. The elections resulted in a majority for the List of Change and Reform.[65] On 29 June, days after the capture of Gilad Shalit, the Israeli armed forces in the West Bank arrested eight Palestinian Government ministers and 26 members of the Palestinian Legislative Council.[66] The Council has been unable to operate since, as the continued detention of its members means it cannot achieve a quorum.

211. The Palestinian Basic Law was developed to function as a temporary constitution for the Palestinian Authority until the establishment of an independent State and a permanent constitution for Palestine can be drawn up. The Basic Law was passed by the Palestinian Legislative Council in 1997 and ratified by the President of the Palestinian Authority in 2002. It has been amended twice: in 2003, the political system was changed to introduce a prime minister and, in 2005, it was amended to conform to the new Election Law.[67] The legal system comprises a body of laws and decrees which include those remaining from previous centuries – Ottoman, British, Jordanian (in the West Bank), Egyptian (in the Gaza Strip) and Israeli – and legislation introduced by presidential decrees and laws passed by the Palestinian Legislative Council.[68]

212. In the jurisdiction of the Palestinian Authority, the court system comprises Magistrate Courts, dealing with misdemeanours; Courts of First Instance, dealing with more serious crimes and appeals against judgements handed down by Magistrate Courts; Appeal Courts, which hear appeals against judgements of the Courts of First Instance; and the High Court, which provides the highest level of appeal. A Supreme Criminal Court was set up in 2006 to try crimes such as murder, abduction, rape, so-called honour crimes and attacks on national security. Military Courts hear cases involving members of the security forces and apply the 1979 PLO Revolutionary Code. The Attorney General and the prosecutors investigate and prosecute crimes, oversee the legality of detentions and investigate complaints by detainees. The Attorney General and the judges are nominated by the Higher Judicial Council, which is headed by the President of the High Court, but appointed by the Palestinian Authority's President.[69] Since June 2007, the Gaza authorities have restructured the judiciary in violation of Palestinian laws. To replace

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[65] The name of the list on which Hamas representatives ran for election.

[66] See chap. XXI.

[67] The Palestinian Basic Law: http://www.palestinianbasiclaw.org

[68] Amnesty International, "Occupied Palestinian Territories torn apart by factional strife", available at: http://www.amnesty.org/en/library/asset/MDE21/020/2007/en/dom-MDE210202007en.html.

[69] Ibid.

officials who had left their jobs under instruction of the Palestinian Authority, the Gaza authorities appointed judges and prosecutors generally lacking experience and independence.[70]

213. Before June 2007, there were about 12,600 Palestinian police officers in Gaza and 6,500 in the West Bank under a unified command. Palestinian civil police were operating from 10 district headquarters (including the one in Ramallah, which is also its main central command). After Hamas seized full control of the Gaza Strip, official data about police numbers are available only for the West Bank, where there are 78 police facilities, including district headquarters, general stations and posts, public order compounds, prisons and detention centres, training centres and stations for border police, tourist police, criminal investigation police and traffic police.[71]

214. In 2005 various security forces were consolidated into three branches: National Security, Internal Security and General Intelligence, each comprising several forces. General Intelligence includes Military Intelligence and the Military Police, and is under the direct control of the Palestinian Authority's President, as is the Presidential Guard/Force 17. National Security and Internal Security are under the jurisdiction of the Ministers of National Security and the Interior, respectively, but their heads are appointed by the Palestinian Authority's President. In 2006, the then Hamas Interior Minister established the Executive Force, mainly composed of members of al-Qassam Brigades and Hamas supporters.[72] Since Hamas seized control in June 2007, law and order and other security functions have been performed by Hamas security organizations.[73] The Gaza authorities announced a series of new bodies or mechanisms to replace the Palestinian Authority's security forces and judicial institutions that have refused to operate under or alongside the Hamas administration.[74] In September 2007, the Internal Security Force was established with most of its personnel coming from al-Qassam Brigades. In October 2007, Hamas dissolved the Executive Force and absorbed its personnel into the police. Both the Internal Security Force and the police report to the minister of interior.[75] (See chapter X.)

215. Most Palestinian political parties have an armed wing or armed groups affiliated to them.[76] The two largest armed groups are al-Aqsa Brigades, the armed wing of Fatah, and al-Qassam Brigades, the armed wing of Hamas. Al-Aqsa Brigades were established by Fatah activists, including members of the Palestinian Authority's security forces, shortly after the

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[70] Human Rights Watch, Internal Fight: Palestinian Abuses in Gaza and the West Bank (July 2008), available at: http://www.hrw.org/en/reports/2008/07/29/internal-fight-0.

[71] The European Union's police mission for the Palestinian Territories (2008), available at: http://www.consilium.europa.eu/uedocs/cmsUpload/EUPOL%20COPPS%20booklet.pdf.

[72] See chap. VII.

[73] Central Intelligence Agency, The World Fact Book 2009 (Gaza Strip), available at: https://www.cia.gov/library/publications/the-world-factbook/geos/gz.html.

[74] "Occupied Palestinian Territories torn apart…".

[75] Internal Fight...

[76] The armed wings of the Islamic Jihad, the Popular Front for the Liberation of Palestine and the Democratic Front for the Liberation of Palestine. There are also other smaller splinter groups.

outbreak of the second intifada. Al-Qassam Brigades were established in the early 1990s with the stated aim of conducting armed resistance to Israeli occupation.[77]

D. Relevant political and administrative structures in Israel

216. In Israel, a largely ceremonial President is elected by the 120-seat Knesset for a seven-year, non-renewable term. The Prime Minister is usually the leader of the largest party or coalition in the Knesset, whose members are elected by party-list, proportional representation for four-year terms. The three main parties are the centre-left Labour Party, the centrist Kadima and the right-wing Likud.[78]

217. Following legislative elections, the President assigns a Knesset member – traditionally the leader of the largest party – the task of forming a governing coalition.

218. Israel has no formal constitution; some of the functions of a constitution are fulfilled by the Declaration of Establishment (1948), the Basic Laws of the parliament (Knesset) and the Israeli Citizenship Law.

219. The court system comprises Magistrates' Courts, which are courts of first instance in criminal and civil matters; District Courts, which are courts of first instance with jurisdiction over serious criminal offences which carry the death penalty or more than seven years' imprisonment and act as appellate courts for the judgments of the Magistrates' Court; and the Supreme Court, which is the highest judicial instance of the country.[79] The Supreme Court hears direct petitions from Israeli citizens. It also hears cases related to Palestinian residents of the West Bank and Gaza Strip sitting as the High Court of Justice.[80] Palestinian civilians charged with security-related and other criminal offences are, however, commonly tried in the Israeli military court system. Since 1967, more than 200,000 cases have been brought before military courts, where Palestinian civilians have been prosecuted and judged by the military authorities. About half the prisoners currently being held in Israel have been sentenced to prison terms by military courts.[81]

220. The Israeli police is a civilian force mandated to fight crime, control traffic and maintain public safety. The border police (*Magav*) is the military branch of the Israeli police, with combat, counter-terrorism and riot-control units.

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[77] "Occupied Palestinian Territories torn apart…".

[78] Freedom House, Country report: Israel (2009), available at: http://www.freedomhouse.org/template.cfm?page=22&country=7630&year=2009.

[79] The State of Israel – The Judicial Authority, at: http://elyon1.court.gov.il/eng/home/index.html.

[80] "As the High Court of Justice, the Supreme Court rules as a court of first instance, primarily in matters regarding the legality of decisions of State authorities: Government decisions, those of local authorities and other bodies and persons performing public functions under the law. It rules on matters in which it considers it necessary to grant relief in the interests of justice, and which are not within the jurisdiction of another court or tribunal." See The State of Israel – Judicial Authority (The Supreme Court), at: http://elyon1.court.gov.il/eng/rashut/maarechet.html.

[81] See Yesh Din – Volunteers for Human Rights, Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories (December 2007), available at: http://www.yesh-din.org/site/images/BackyardProceedingsEng.pdf.

221. Branches of the military are the Israeli Defense Forces (IDF), Israeli Naval Forces (INF) and the Israeli Air Force (IAF). The Israeli military is headed by the Chief of General Staff under the Minister of Defense. The structure of the Israeli army comprises four regional commands: (a) the Northern Command; (b) the Central Command; (c) the Southern Command; and (d) the Home Front Command. The Coordinator of Government Activities in the Territories (COGAT) – formerly known as the "Civil Administration" – is a unit in the Israeli Ministry of Defense that administers areas of the West Bank and coordinates with international organizations operating in the West Bank and the Gaza Strip.

222. The Israeli intelligence services are: (a) the Institute for Intelligence and Special Operations (*Mossad*); (b) the Israeli Security Agency (formerly the General Security Services) or the Israeli internal security service (*Shin Bet* or *Shabak*); and (c) the Military Intelligence (*Aman*).

III. EVENTS OCCURRING BETWEEN THE "CEASEFIRE" OF 18 JUNE 2008 BETWEEN ISRAEL AND THE GAZA AUTHORITIES AND THE START OF ISRAEL'S MILITARY OPERATIONS IN GAZA ON 27 DECEMBER 2008

223. As mentioned in chapter I, in order to implement its mandate the Mission decided to focus primarily on events, actions or circumstances that had occurred since 19 June 2008, when a ceasefire was agreed between the Government of Israel and Hamas. Accordingly, both in the context of its mandate and in order to be informed about the environment in which the Israeli military operations in the Gaza Strip took place, the Mission reviewed incidents relevant to the ceasefire that were reported to have taken place between 19 June 2008 and the start of Israel's military operations in the Gaza Strip. Information about these incidents, which are recorded in chronological order, was gathered primarily from documents in the public domain and may not represent all incidents that occurred during this period.[82]

224. On 18 June 2008, the Gaza authorities and Israel announced a six-month ceasefire in an agreement brokered by Egypt.[83] The ceasefire came into effect on 19 June 2008 at 6 a.m.[84]

225. The terms of the ceasefire agreement were not set out in any formal, written document and, according to recent analysis, the Gaza authorities' and Israel's understanding of the terms

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[82] Sources include public statements issued by the Gaza authorities, Palestinian armed groups and Israel, reports of the United Nations, national and international NGOs and the media.

[83] The ceasefire was officially termed "a period of calm" (Tahdiyah in Arabic). It has also been referred to as "security calm" and "lull".

[84] Prime Minister Olmert's comments on the calm in the south, Press Release, 18 June 2008, Prime Minister's Office, available at: http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2008/06/spokecalm180608.htm; Al Ahram Weekly, "Calm for now", 19 June 2008, available at: http://weekly.ahram.org.eg/2008/902/eg2.htm; Felesteen Newspaper, "Gaza: Hamas: the Tahdiyah is the fruit of the resilience and resistance of the (resistance) groups and its unity", 18 June 2009, available at: http://www.felesteen.ps/file/pdf/2008/06/18/1.pdf; 19 June 2009; Felesteen Newspaper, Gaza, Tahdiya starts today accompanied with international and popular welcoming, http://www.felesteen.ps/file/pdf/2008/06/19/1.pdf. See chap. II.

differed substantially.[85] According to information reported by OCHA, the agreement included a commitment by the Gaza authorities to halt attacks by Palestinian armed groups against Israel immediately and a commitment by Israel to cease its military operations in Gaza. Israel also reportedly agreed to ease its blockade of Gaza and gradually lift its ban on the import of a large number of commodities.[86] According to Egyptian sources quoted by the International Crisis Group,[87] after three weeks the two sides were to commence negotiations for a prisoner exchange and the opening of the Rafah crossing.

226. The agreement was made in respect to the territory of the Gaza Strip only, but Egypt reportedly undertook to work to expand the ceasefire to the West Bank after the initial six-month ceasefire had elapsed.[88]

227. The first incident relevant to the ceasefire reportedly took place on 23 June 2008, when a 67-year-old Palestinian civilian was injured when the Israeli military stationed at the border north-west of Beit Lahia opened fire on a group of Palestinians trying to collect fire wood near the border. Also on 23 June, two mortar shells were reportedly fired from central Gaza. One landed near the Nahal Oz crossing and the other in the Negev desert; no injuries were reported.[89]

228. Between 18 and 24 June 2008, the Karni (al-Mintar) crossing conveyor belt was opened for four days for wheat and animal feed but was closed to all other imports and exports. The Erez crossing was open for six days to allow the movement of diplomats, international humanitarian workers and critical medical cases. OCHA indicated that senior Palestinian businessmen were also allowed to cross. The Sufa crossing was open for five days during the week ending 24 June 2008, while the Kerem Shalom and Rafah crossings remained closed. The Nahal Oz energy pipelines were open on the six scheduled operating days.[90]

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[85] See International Crisis Group, "Ending the war in Gaza", Middle East Briefing No. 26, 5 January 2009, p. 3, available at: http://www.crisisgroup.org/library/documents/middle_east___north_africa/arab_israeli_conflict/b26_ending_the_war_in_gaza.pdf.

[86] OCHA, Protection of Civilians Weekly Report (18-24 June 2008), available at: http://www.ochaopt.org/documents/Weekly_Briefing_Notes_265_English.pdf; see also "Ending the war…", which also notes that crossing points were to be opened after 72 hours (6 a.m. on 22 June 2008) to allow 30 per cent more goods into Gaza and, on 1 July 2009, all crossings were to be opened to allow for the transfer of goods into Gaza (footnote 1). It is the Mission's understanding that, in relation to the transfer of goods, the agreement did not include materials that could be used to make explosives or projectiles.

[87] See "Ending the war…".

[88] "Ending the war…", footnote 1. See also The Jerusalem Post, "End of truce? 3 Kassams hit w. Negev", 24 June 2008, available at http://www.jpost.com/servlet/Satellite?cid=1214132667653&pagename=JPost%2FJPArticle%2FShowFull.

[89] OCHA, Protection of Civilians Weekly Report (18-24 June 2008).

[90] Ibid.

229. Shortly after midnight on 24 June 2008, a mortar fired from Gaza landed in the Negev near the Karni checkpoint, causing no injuries or damage.[91] No group claimed responsibility for the attack.[92]

230. At dawn on 24 June 2008, the Israeli armed forces launched a raid in the West Bank town of Nablus in which an Islamic Jihad activist and another Palestinian man were killed.[93] According to statements reportedly made by the Palestinian armed group Islamic Jihad, it responded by firing three Qassam rockets into Israel, which landed in the western Negev desert.[94] It added: "We cannot keep our hands tied when this is happening to our brothers in the West Bank", while a Gaza authorities spokesman was quoted as saying that the rocket attack came as a result of "Israeli provocation" but that Hamas, as the Gaza authorities, was "committed to the security calm".[95] In Israel, the Foreign Ministry spokesperson termed the rocket attacks "a grave violation of the ceasefire"[96] and said it would consider reimposing economic sanctions.[97]

231. On 26 June 2008, Israel's Defense Ministry ordered the reclosure of the Gaza border crossings, save for special humanitarian cases, in response to the rocket attacks two days previously.[98] The Gaza authorities accused Israel of violating the ceasefire, stating "if the crossings remain closed, the truce will collapse".[99]

232. Later on 26 June 2008, one rocket was fired from Gaza into Israel for which the Palestinian armed group al-Aqsa Martyrs' Brigades claimed responsibility.[100] As reported by the Xinhua news agency, the armed group stated that "the truce must include the West Bank and all

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[91] Rianovosti, "Mortar attack from Gaza hit Israel", 24 June 2008, available at: http://en.rian.ru/world/20080624/111867958.html; "End of truce?...".

[92] "Mortar attack…".

[93] "End of truce?..."; The New York Times, "Rockets hit Israel, breaking Hamas truce", 25 June 2008, available at http://www.nytimes.com/2008/06/25/world/middleeast/25mideast.html

[94] "End of truce?...".

[95] Ibid.

[96] Ibid.

[97] BBC News, "Rockets 'violated Gaza ceasefire'", 24 June 2008, available at: http://news.bbc.co.uk/2/hi/middle_east/7470530.stm

[98] Xinhua News, "Israeli FM calls for immediate military response to Qassam attacks", 26 June 2008.

[99] Gaza authorities, "The Government: Closing the crossings is an infringement of truce, and we call Egypt to interpose", press statement (25 June 2008), available at: http://www.moi.gov.ps/en/?page=633167343250594025&Nid=4702; see also "Israeli FM calls for immediate military response…".

[100] OCHA, Protection of Civilians Weekly Report (25 June–1 July 2008), available at: http://www.ochaopt.org/documents/Weekly_Briefing_Notes_266.pdf.

sorts of aggression must stop".[101] The Israeli Foreign Minister commented, "I do not care which organization fired the rocket. Israel must respond militarily and immediately."[102]

233. On 27 June 2008, the al-Aqsa Martyrs' Brigades claimed responsibility for firing mortar shells into Israel, one of which landed near Sderot. The head of the Gaza authorities, Ismail Haniyah, called on all the Palestinian factions to adhere to the ceasefire, stating that "the factions and the people accepted the lull in order to secure two interests – an end to aggression and the lifting of the siege". A spokesman for the Gaza authorities was quoted as saying that it considered the rocket attacks to be "unpatriotic" and that Hamas was considering the possibility of taking action against those perpetrating the attacks against Israel.[103]

234. On 28 June 2008, mortar shells were reportedly fired at the Karni crossing but no group claimed responsibility. On 29 June 2008, the crossings into Gaza were closed,[104] save for the delivery of fuel.

235. On 30 June 2008, Israel reported that a rocket fired from Gaza fell near the kibbutz of Miflasim. No group claimed responsibility and Israel confirmed that as of 1 July 2008 no rocket fragments had been located. Israel closed the crossings which had been reopened the day before. The Gaza authorities rejected the assertion that a rocket had in fact been fired and called the closure of the crossings "unjustified".[105]

236. On several occasions during the last two weeks of June, the Israeli navy fired at Palestinian fishermen off the Gaza coast, forcing them to return to shore.[106]

237. During the month of June, the number of truckloads of goods allowed into Gaza represented only 17 per cent of the number that entered Gaza in May 2007, before Hamas seized control of the Gaza Strip. No exports had been allowed out of Gaza by Israel since December 2007.[107]

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[101] Xinhua News, "Israeli FM calls for immediate military response ... ".

[102] Israel Ministry of Foreign Affairs: "FM Livni: Israel will not tolerate violations of the calm", press release (26 June 2008), available at: http://www.mfa.gov.il/MFA/About+the+Ministry/MFA+Spokesman/2008/Israel%20will%20not%20tolerate%20violations%20of%20the%20calm%2026-Jun-2008.

[103] Ynet News, "Haniyeh: All Palestinian factions should honor truce", 27 June 2008; http://www.ynetnews.com/articles/0,7340,L-3561133,00.html.

[104] Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center, "The six months of the lull arrangement", December 2008.

[105] The Guardian, "Israel closes Gaza crossing after reported rocket attack", 1 July 2008, available at: http://www.guardian.co.uk/world/2008/jul/01/israelandthepalestinians.middleeast.

[106] OCHA, Protection of Civilians Weekly Report (18–24 June 2008) and Protection of Civilians Weekly Report (25 June–1 July 2008).

[107] OCHA, The Humanitarian Monitor, No. 26 (June 2008), available at http://www.ochaopt.org/documents/HM_June_2008.pdf.

238. On 1 July 2008, a spokesman for the Gaza authorities accused the Israeli armed forces of shooting a 65-year-old Palestinian woman who was living near the border. Israel said that it was investigating the claim.[108]

239. On 2 July 2008, Israel reopened the Sufa and Karni crossings to allow passage of goods into Gaza, while 45 medical evacuations were allowed through the Erez crossing.[109]

240. Also on 2 July 2008, several thousand Palestinians attempted to break into the Rafah terminal and cross into Egypt. Egyptian security forces responded with water cannons and tear gas to force them back into Gaza.[110]

241. On 3 July 2008, a rocket launched from Gaza struck north of Sderot and Israel closed the crossings into Gaza for the day on 4 July 2008 in response.[111]

242. On 7 July 2008, a mortar shell fired from Gaza landed near the Karni crossing, on the Gaza side.[112] On the same day, Israeli forces began raids on institutions in Nablus that it believed to be linked to Hamas. Over the following four days, a mosque, a newspaper and other offices were raided, and a medical centre and the Nafha Prisoners' Association were closed down.[113]

243. On 8 July 2008, two mortars were fired from Gaza,[114] one landing at the Sufa crossing and the other inside the Gaza Strip. Israel closed the crossings briefly. Following the firing of another mortar shell into Israel, the crossing was again closed.

244. On 9 July 2008, Israeli forces shot dead a Hamas member near the West Bank city of Jenin. This led Palestinian Authority Prime Minister Salam Fayyad to warn that the Israeli military actions in the West Bank were undermining the Palestinian Authority and its efforts to improve security.[115]

245. On 10 July 2008, the Israeli armed forces shot and killed a member of al-Aqsa Martyrs' Brigades near the Kissufim crossing. The Israeli armed forces stated that warning shots had been fired. In response, the al-Aqsa Martyrs' Brigades fired two rockets into Israel which landed in an open area. Sources inside Gaza said that the Gaza authorities had arrested those responsible for

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[108] "Israel closes Gaza crossings after reported rocket…".

[109] Government of Israel Ministry of Foreign Affairs, "Humanitarian Assistance to Gaza during the period of calm (19 June – Dec 18, 2009)", 26 December 2008, available at http://www.mfa.gov.il/MFA/Government/Communiques/2008/Humanitarian_assistance%20_to_Gaza_since_June_19_calm_understanding_18_Nov_2008

[110] OCHA, Protection of Civilians Weekly Report (2–8 July 2008), available at: http://www.ochaopt.org/documents/Weekly_Briefing_Notes_267.pdf.

[111] "The six months…".

[112] OCHA, Protection of Civilians Weekly Report (2–8 July 2008).

[113] PCHR, "PCHR condemns IOF measures against Nablus charities", press release (8 July 2009), available at:http://www.pchrgaza.org/files/PressR/English/2008/62-2008.html; BBC News, "Gaza militants fire two rockets", 10 July 2008, available at: http://news.bbc.co.uk/2/hi/middle_east/7500322.stm

[114] "The six months…".

[115] "Gaza militants fire…".

firing the rockets and the al-Aqsa Martyrs' Brigades stated that its members had been "abducted" by Hamas.[116]

246. According to Israeli sources, on 12 July 2008 a rocket launched from the Gaza Strip struck an open area in Sha'ar Hanegev and on 13 July 2008 two mortar shells fired fell short inside the Gaza border. This led to Israel closing the Nahal Oz and Sufa crossings. On 15 July 2008, a mortar shell struck territory inside Israel, while three rockets misfired and landed inside the Gaza Strip, in separate incidents on 25, 29 and 31 July 2008.[117]

247. On 29 July, a 10-year-old boy was shot in the head and killed by the Israeli Border Police during a demonstration against the wall in Ni'lin in the West Bank. During a clash with Israeli Border Police the following day, after the funeral in Ni'lin, a 17 year-old boy was shot in the head and died on 4 August.[118]

248. During July 2008, the amount of commodities allowed into Gaza by Israel was assessed by OCHA as remaining "far below the actual needs" and was "restricted to certain selected essential humanitarian items". The imports were 46 per cent of those entering Gaza in May 2007, prior to the Hamas' seizing control of the Gaza Strip. As a result of the restriction on imports and total ban on exports, 95 per cent of Gaza's industries remained closed.[119]

249. In August 2008, according to Israeli sources, three mortars and eight rockets were fired into Israel from the Gaza Strip. They included a rocket which struck Sderot on 11 August 2008,[120] prompting Israel's closure of the crossings, as well as a rocket fired on 20 August 2008, which once again led to the closure of the border crossings.[121]

250. During August, there was a reduction in the number of truckloads carrying goods into Gaza. August imports represented 70 per cent of the July 2008 imports and 23 per cent of the May 2007 level.[122]

251. In September 2008, three mortars and one rocket were fired into Israel from the Gaza Strip, according to Israeli sources.[123]

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[116] Ibid.; Reuters, "Hamas arrests first rocket squads since truce", 10 July 2008, available at: http://www.reuters.com/article/latestCrisis/idUSL10355564.

[117] "The six months…".

[118] Al-Haq, "Right to life of Palestinian children disregarded in Ni'lin as Israel's policy of wilful killing of civilians continues", press release (7 August 2008), available at: http://www.alhaq.org/etemplate.php?id=387.

[119] OCHA, The Humanitarian Monitor, No. 27 (July 2008), available at: http://www.ochaopt.org/documents/Humanitarian_Monitor_July_2008.pdf.

[120] "The six months…".

[121] Office of the United Nations High Commissioner for Refugees (UNHCR), "Israel-Occupied Palestine Territories: Rocket attack throws Gaza crossing plan into jeopardy", 20 August 2008, available at: http://www.unhcr.org/refworld/topic,45a5199f2,4874797e3b,48ae79b81e,0.html.

[122] OCHA, The Humanitarian Monitor, No. 28 (August 2008), available at http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_08_2008_english.pdf.

252. During September, the movement of goods and people in and out of Gaza through the crossing increased, with levels of imports at 37 per cent of the May 2007 level. The Sufa crossing closed on 13 September 2008 and goods were redirected through Kerem Shalom, as Israel stated that it intended to have only one goods crossing open at any one time.[124]

253. In October 2008, Israeli sources stated that only one rocket and one mortar were fired into Israel from the Gaza Strip.[125] There was a 30 per cent decline in imports allowed into Gaza by Israel as compared to September 2008, partly due to the closure of the crossings during the Jewish holidays. Imports were at 26 per cent of the level of May 2007. Tunnels under the Rafah border reportedly proliferated during this period and allowed the entry of otherwise unavailable goods. Collapsing tunnels continued to cause casualties.[126]

254. After two months in which few incidents were reported, the ceasefire began to founder on 4 November 2008 following an incursion by Israeli soldiers into the Gaza Strip, which Israel stated was to close a cross-border tunnel that in Israel's view was intended to be used by Palestinian fighters to kidnap Israeli soldiers. The soldiers attacked a house in the Wadi al-Salqa village, east of Deir al-Balah, which was alleged to be the starting point of the tunnel, killing a member of the al-Qassam Brigades. Several Israeli soldiers were wounded. In response, the al-Qassam Brigades fired more than 30 Qassam rockets into Israel. Israel responded with an air strike that left a further five members of the al-Qassam Brigades dead. Both sides blamed the other for the escalation of violence. Hamas also accused Israel of trying to disrupt talks between Hamas and Fatah that were scheduled for the following week in Cairo.[127] Israel closed the crossings into the Gaza Strip on 5 November 2008 and they remained closed until 24 November 2008, when they were opened briefly to allow humanitarian supplies to enter.[128]

255. According to the Israeli internal intelligence service (known as *Shin Bet* or *Shabak*), 22 rockets and nine mortars were fired into Israel between 5 and 12 November 2008.[129] The crossings into the Gaza Strip remained closed during this time. On 14 November 2008, Amnesty

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[123] "The six months …".

[124] OCHA, The Humanitarian Monitor, No. 29 (September 2008), available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_10_1_english.pdf.

[125] Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center, "Summary of rocket fire and mortar shelling in 2008", January 2009.

[126] OCHA, The Humanitarian Monitor, No. 30 (October 2008), available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_oct_2008_10_english.pdf.

[127] The Guardian, "Gaza truce broken as Israeli raid kills six Hamas gunmen", 5 November 2008, available at: http://www.guardian.co.uk/world/2008/nov/05/israelandthepalestinians; The Times, "Six die in Israeli attack over Hamas 'tunnel under border to kidnap soldiers'", 6 November 2008, available at http://www.timesonline.co.uk/tol/news/world/middle_east/article5089940.ece. A Hamas spokesman was quoted as saying "The Israelis began this tension and they must pay an expensive price" while an Israeli spokesman stated "this operation was in response to a Hamas intrusion of the quiet".

[128] JTA, "Israel closes Gaza crossings after attack", 25 November 2008, available at http://jta.org/news/article-print/2008/11/25/1001205/israel-closes-gaza-crossings-after-attack?TB_iframe=true&width=750&height=500.

[129] Israel Security Agency, "Weekly update, November 5-12, 2008", available at http://www.shabak.gov.il/SiteCollectionImages/english/TerrorInfo/weekly-update-12-11-08-En.pdf.

International issued a press release calling on Israel to allow humanitarian aid and medical supplies to enter.[130]

256. On 17 November 2008, Amnesty International issued another press release, noting that on that day Israel had allowed a limited number of trucks carrying humanitarian assistance to enter Gaza. Amnesty International also noted that an additional ten members of Palestinian armed groups had been killed by Israeli air strikes since the killing of six members of Palestinian armed groups by Israel on 4 November 2008.[131]

257. Palestinian armed groups fired rockets and mortars into Israel throughout November 2008. According to Israeli sources, 125 rockets were fired into Israel during November 2008 (compared to one in October) and 68 mortars shells were fired (also compared to one in October).[132] On 14 November 2008, a resident of Sderot was lightly injured by shrapnel.

258. Israel closed the crossings into Gaza for most of November 2008, although 42 trucks of humanitarian aid were permitted to cross on 24 November 2008 and about 60 on 26 November 2008.[133] According to OCHA, the number of trucks allowed into Gaza in November 2008 was 81 per cent lower than in October 2008. Shortages forced most of Gaza's bakeries to close and UNRWA suspended food distribution for five days to 750,000 Gazans owing to a lack of food supplies.[134]

259. Rocket and mortar fire by Palestinian armed groups continued unabated throughout December 2008.[135] According to Israeli sources, 71 rockets and 59 mortars were fired into Israel between 1 and 18 December.[136] The number of rockets and mortars fired from the Gaza Strip into Israel spiked,[137] following the killing by the Israeli armed forces of an Islamic Jihad

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[130] Amnesty International, "Israel blocks deliveries to Gaza", 14 November 2008, available at http://www.amnesty.org/en/news-and-updates/news/israeli-army-blocks-deliveries-gaza-20081114.

[131] Amnesty International, "Israeli Army relaxes restrictions on humanitarian aid to Gaza", 17 November 2008, available at http://www.amnesty.org/en/news/news-and-updates/israeli-army-relaxes-restrictions-humanitarian-aid-gaza-20081117.

[132] "Summary of rocket fire…"

[133] JTA, "Israel closes Gaza crossings after attack…" and "Kassams continue to strike Negev", 27 November 2008, available at http://jta.org/news/article-print/2008/11/27/1001233/kassams-continue-to-strike-negev?TB_iframe=true&width=750&height=500.

[134] OCHA The Humanitarian Monitor, No. 31 (November 2008), available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_11_1_english.pdf.

[135] See, for example, JTA, "Kassams fired again from Gaza", 3 December 2008, available at: http://jta.org/news/article-print/2008/12/03/1001316/attacks-from-gaza-increase?TB_iframe=true&width=750&height=500; JTA, "Rockets barrage Israel over weekend", 7 December 2008, available at: http://jta.org/news/article-print/2008/12/07/1001377/rockets-barrage-israel-over-weekend?TB_iframe=true&width=750&height=500; JTA, "Three injured in Kassam attack", 17 December 2008, available at http://jta.org/news/article/2008/12/17/1001621/more-kassams-rain-on-israel#comment_72450; and JTA, "Kassam rocket hits Sderot home", 21 December 2008, available at: http://jta.org/news/article/2008/12/21/1001713/kassam-rocket-hits-sderot-home.

[136] "Summary of rocket fire …".

[137] Ibid

commander in the West Bank on 15 December 2008.[138] One of the rockets launched from the Gaza Strip on 17 December 2008 struck the car park of a shopping centre in Sderot, injuring three people and causing significant damage to property.[139]

260. On 2 December 2008, the Israeli air force killed two Palestinian children and seriously injured two others when one of its aircraft fired a missile at a group of Palestinian children who were sitting in a street near Rafah. An Israeli military spokesman admitted responsibility for the attack and claimed that it was targeting members of Palestinian armed groups. Eyewitnesses informed the Palestinian Centre for Human Rights (PCHR) that the victims were civilians.[140]

261. On 5 December 2008, an Israeli aircraft fired a missile at members of what PCHR described as "activists of the Palestinian resistance" in Jabaliyah refugee camp in the northern Gaza Strip, seriously wounding one person.[141] On 18 December, an Israeli air strike killed a man in Beit Lahia.[142] The same day, Israeli aircraft attacked a car maintenance workshop in the city of Khan Yunis in the southern Gaza Strip. The workshop was destroyed and a number of nearby houses were damaged.[143]

262. On 18 December 2008, the Gaza authorities declared that the truce was at an end and would not be renewed on the grounds that Israel had not abided by its obligations to end the blockade on Gaza.[144]

263. On 21 December 2008, a rocket hit a house in Sderot and a foreign worker was injured as a result of a rocket striking Ashkelon.[145] Israel responded with air strikes into Gaza City, wounding a Palestinian infant in her home.[146] Israel's Prime Minister and Defense Minister stated that Israel would no longer practise restraint following the rocket attacks.[147]

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[138] JTA, "Kassams hit Israel after terrorist killed", 16 December 2008, available at: http://jta.org/news/article-print/2008/12/16/1001575/kassams-hit-israel-after-terrorist-killed?TB_iframe=true&width=750&height=500.

[139] "Three injured…".

[140] PCHR, "Weekly report on Israeli human rights violations in the Occupied Palestinian Territory", No. 48/2008 (24 November – 3 December 2008), available at: http://www.pchrgaza.org/files/W_report/English/2008/04-12-2008.htm.

[141] PCHR, "Weekly report on Israeli human rights violations in the Occupied Palestinian Territory", No. 49/2008 (4-17 December), available at: http://www.pchrgaza.org/files/W_report/English/2008/18-12-2008.htm. The Mission notes the lack of clarity as to whether these were armed members of the Palestinian armed groups or civilians.

[142] Al-Jazeera, "Israeli missile kills Gaza man", 18 December 2008; available at: http://english.aljazeera.net/news/middleeast/2008/12/2008121721428340460.html.

[143] PCHR, "Weekly report on Israeli human rights violations in the Occupied Palestinian Territory", No. 50/2008 (18–23 December 2008), available at: http://www.pchrgaza.org/files/W_report/English/2008/24-12-2008.htm.

[144] Reuters, "Hamas declares end to ceasefire with Israel in Gaza", 18 December 2008, available at: http://www.reuters.com/article/topNews/idUSL17562322008121 8.

[145] "Kassam rocket…".

[146] "Weekly report…", No. 50/2008.

[147] "Kassam rocket…".

264. On 22 December 2008, a 24-hour ceasefire was declared at Egypt's request. Three rockets and one mortar were launched from Gaza that day. Israel opened the border to allow a limited amount of humanitarian aid to enter Gaza.[148]

265. By 23 December 2008, rocket and mortar fire was again increasing significantly; 30 rockets and 30 mortars were fired into Israel on 24 December 2008.[149] The Israeli armed forces continued to conduct air strikes on positions inside Gaza and the crossings into Israel remained closed. On 26 December 2008, a rocket launched from Gaza fell short and hit a house in northern Gaza killing two girls, aged 5 and 12.[150]

266. The intensified closure regime on the Gaza crossings which began in November continued in December, with imports restricted to very basic food items and limited amounts of fuel, animal feed and medical supplies. According to OCHA, many basic food items were no longer available and negligible amounts of fuel were allowed to enter Gaza. This resulted in the health sector in Gaza deteriorating further into a critical condition, with hospitals continuing to face problems as a result of power cuts, low stocks of fuel to operate back-up generators, lack of spare parts for medical equipment and shortages of consumables and medical supplies.[151] On 18 December 2008, UNRWA once again suspended its food distribution programme for the rest of the month, owing to shortages.[152]

267. On 27 December 2008, Israel started its military operations in Gaza.[153]

IV. APPLICABLE LAW

268. The Mission's mandate covers all violations of international human rights law (IHRL) and international humanitarian law (IHL) that might have been committed at any time, whether before, during or after, in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 to 18 January 2009. The Mission has therefore carried out its task within the framework of general international law, in particular IHRL and IHL.

A. Self-determination

269. A fundamental element in the legal framework is the principle of self-determination of peoples, derived from the Charter of the United Nations, Article 1, accepted as constituting

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[148] JTA, "Hamas curtails launching rockets for 24 hours", 22 December 2008, available at: http://jta.org/news/article-print/2008/12/22/1001726/hamas-stops-lauching-rockets-for-24-hours?TB_iframe=true&width=750&height=500; "Summary of rocket fire…".

[149] "Summary of rocket fire…".

[150] Fox News, "Palestinian rockets kill 2 schoolgirls in Gaza", 26 December 2008, available at http://www.foxnews.com/story/0,2933,473066,00.html.

[151] OCHA, The Humanitarian Monitor, No. 32 (December 2008), available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_12_1_15_english.pdf.

[152] UNRWA, "UNRWA suspends food distribution in Gaza", press release (18 December 2008), available at: http://www.un.org/unrwa/news/releases/pr-2008/gaz_18dec08.html.

[153] The New York Times, "Israelis say strikes against Hamas will continue", 28 December 2008, available at: http://www.nytimes.com/2008/12/28/world/middleeast/28mideast.html?_r=2&hp.

customary international law, and set out as a right of peoples in the two International Covenants on Human Rights (common article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)). The right of the Palestinian people to self-determination has been affirmed by the General Assembly and the International Court of Justice in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.[154] Self-determination has special prominence in the context of the recent events and military hostilities in the region, because they are but one episode in the long occupation of the Palestinian territory. The right to self-determination has an *erga omnes* character whereby all States have the duty to promote its realization. This is also recognized by the United Nations General Assembly, which has declared that peoples who resist forcible action depriving them of their right to self-determination have the right to seek and receive support from third parties.[155] Those who take action amounting to military force must comply with IHL.

B. International humanitarian law

270. All parties to the armed conflict are bound by relevant rules of IHL, whether of conventional or customary character. International humanitarian law comprises principles and rules applicable to the conduct of military hostilities and provides for restraints upon the conduct of military action so as to protect civilians and those that are *hors de combat*. It also applies to situations of belligerent occupation.

271. Israel is a party to the four Geneva Conventions of 12 August 1949, but has not ratified their Additional Protocols I or II on the protection of victims of armed conflict. In addition, Israel is a party to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, as well as its Protocol I on Non-Detectable Fragments, both of 10 October 1980.

272. Many of the rules contained in the Fourth Hague Convention respecting the Laws and Customs of War on Land and the Regulations annexed to it, and the four Geneva Conventions and their Additional Protocols are now part of customary international law. Israel's High Court of Justice has confirmed that Israel must adhere to those rules and principles reflected in the Fourth Geneva Convention, the Regulations annexed to the Fourth Hague Convention and the customary international law principles reflected in certain provisions of Additional Protocol I to the Geneva Conventions of 1949. The Government of Israel accepts that, although it is not a party to the Additional Protocol I, some of its provisions accurately reflect customary international law.[156] Under the rules of State responsibility, Israel is responsible for any violations of international law attributable to it. Specifically, under the Fourth Geneva

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[154] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004, p. 135, paras. 149, 155 and 159.

[155] Ibid., para. 156; Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970).

[156] "The operation in Gaza…", para. 31.

Convention, article 29, "the Party to a conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred."

273. The legal framework applicable to situations of occupation includes provisions contained in the Hague Regulations (especially articles 42–56), the Fourth Geneva Convention (especially articles 47–78) and Additional Protocol I, and customary international law. The successive steps in the development of that legal framework represent attempts by the international community to protect human beings better from the effects of war while giving due account to military necessity.

274. Article 42 of the Hague Regulations, regarded as customary international law,[157] prescribes that "territory is considered occupied when it is actually placed under the authority of the hostile army". The occupying authority so established shall take all measures in its power "to restore, and ensure, as far as possible, public order and safety" in the occupied area (art. 43). These provisions call for an examination of whether there was exercise of authority by Israel in the Gaza Strip during the period under investigation.

275. While the drafters of the Hague Regulations were as much concerned with protecting the rights of the State whose territory is occupied as with protecting the inhabitants of that territory, the drafters of the Fourth Geneva Convention sought to guarantee the protection of civilians ("protected persons"[158]) in times of war regardless of the status of the occupied territories.[159] That the Fourth Geneva Convention contains requirements in many respects more flexible than the Hague Regulations and thus offering greater protections was recognized by the International Criminal Tribunal for the former Yugoslavia in the Naletelic case, where the Trial Chamber applied the test contained in article 6 of the Fourth Geneva Convention: the protections provided for in the Fourth Geneva Convention become operative as soon as the protected persons fall "in the hands" of a hostile army or an occupying Power, this being understood not in its physical sense but in the broader sense of being "in the power" of a hostile army. The Trial Chamber concluded that: "the application of the law of occupation as it effects 'individuals' as civilians protected under Geneva Convention IV does not require that the occupying Power have actual authority".[160]

276. Israel has without doubt at all times relevant to the mandate of the Mission exercised effective control over the Gaza Strip. The Mission is of the view that the circumstances of this control establish that the Gaza Strip remains occupied by Israel. The provisions of the Fourth Geneva Convention therefore apply at all relevant times with regard to the obligations of Israel towards the population of the Gaza Strip.

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[157] Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment of 19 December 2005, I.C.J. Reports 2005, para. 172; Legal Consequences…, para. 78.

[158] Under the Fourth Geneva Convention, protected persons are those who, at a given moment and in any manner whatsoever, find themselves in the hands of a party to the conflict or occupying Power of which they are not nationals.

[159] Legal Consequences…, para. 95.

[160] *Prosecutor* v. *Naletilić*, case No. IT-98-34-T, Decision of 31 March 2003, paras. 219-222.

277. Despite Israel's declared intention to relinquish its position as an occupying Power by evacuating troops and settlers from the Gaza Strip during its 2005 "disengagement",[161] the international community continues to regard it as the occupying Power.[162]

278. Given the specific geopolitical configuration of the Gaza Strip, the powers that Israel exercises from the borders enable it to determine the conditions of life within the Gaza Strip. Israel controls the border crossings (including to a significant degree the Rafah crossing to Egypt, under the terms of the Agreement on Movement and Access[163]) and decides what and who gets in or out of the Gaza Strip. It also controls the territorial sea adjacent to the Gaza Strip and has declared a virtual blockade and limits to the fishing zone, thereby regulating economic activity in that zone. It also keeps complete control of the airspace of the Gaza Strip, inter alia, through continuous surveillance by aircraft and unmanned aviation vehicles (UAVs) or drones. It makes military incursions and from time to time hit targets within the Gaza Strip. No-go areas are declared within the Gaza Strip near the border where Israeli settlements used to be and enforced by the Israeli armed forces. Furthermore, Israel regulates the local monetary market based on the Israeli currency (the new sheqel) and controls taxes and custom duties.

279. The ultimate authority over the Occupied Palestinian Territory still lies with Israel. Under the law and practice of occupation, the establishment by the occupying Power of a temporary administration over an occupied territory is not an essential requirement for occupation, although it could be one element among others that indicates the existence of such occupation.[164] In fact, as shown in the case of Denmark during the Second World War, the occupier can leave in place an existing local administration or allow a new one to be installed for as long as it preserves for itself the ultimate authority. Although Israel has transferred to the Palestinian Authority a series of functions within designated zones, it has done so by agreement, through the Oslo Accords and related understandings, keeping for itself "powers and responsibilities not so transferred".[165] When Israel unilaterally evacuated troops and settlements from the Gaza Strip, it left in place a Palestinian local administration. There is no local governing body to which full authority has been transferred. In this regard, the Mission recalls that the International Court of Justice, in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, regards the transfer of powers and responsibilities by Israel under various agreements with the Palestine Liberation Organization (PLO) as having "done nothing" to alter the character of Israel as an occupying Power.[166]

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[161] Disengagement Plan – General Outline, Prime Minister's Office, 15 April 2004, para. 2 (i)(3), available at www.pmo.gov.il/PMOEng/Archive/Press+Releases/2004/Disengagement+Plan.

[162] Security Council resolution 1860 (2009) and Human Rights Council resolution S-9/1.

[163] This Agreement of November 2005 represents the commitments of the Government of Israel and the Palestinian Authority. Its implementation and further elaboration will be assisted by the Quartet Special Envoy for Disengagement and his staff and/or the United States Security Coordinator and his staff. It is available at http://unispal.un.org/unispal.nsf/b987b5db9bee37bf85256d0a00549525/c9a5aa5245d910bb852570bb0051711c/$FILE/Rafah%20agreement.pdf.

[164] Prosecutor v. Naletilić, para. 217.

[165] Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 1995, art. I (1).

[166] Legal Consequences…, paras. 76–78.

280. Although the essential elements of occupation are present in the Gaza Strip, account must be taken of the fact that inside Gaza there is a de facto local administration, which carries out the functions and responsibilities in various areas transferred to the Palestine Authority under the Oslo Accords, to the extent that it is able to do so in the light of the closures and blockade imposed by Israel.

281. The developments that have taken place in the past two decades, in particular through the jurisprudence of international tribunals, have led to the conclusion that the substantive rules applicable to either international or non-international armed conflicts are converging. The Mission nonetheless recognizes that certain differences exist in relation to the regime of enforcement established by treaty law, in particular the regime of "grave breaches" contained in the Geneva Conventions.

282. Military hostilities took place between the Israeli armed forces and the military wing of Hamas (al-Qassam Brigades) and of other Palestinian factions, including the al-Aqsa Martyrs' Brigades, loosely affiliated with the Fatah movement in control of the Palestine Authority. The Israeli Supreme Court has seen the confrontation between Israeli armed forces and what it calls "terrorist organizations" active in the Occupied Palestinian Territory as an international armed conflict on two grounds: the existing context of the occupation and the cross-border nature of the confrontation.[167] Nonetheless, as the Government of Israel suggests, the classification of the armed conflict in question as international or non-international, may not be too important as "many similar norms and principles govern both types of conflicts".[168]

283. It is common for armed conflicts to present elements of an international as well as of a non-international character. The rules contained in article 3 common to the four Geneva Conventions, regarded as customary international law, are the baseline rules applicable to all conflicts.[169] The concern for the protection of civilians and those *hors de combat* in all kinds of conflicts has led to an increasing convergence in the principles and rules applicable to international and non-international armed conflicts, as was authoritatively held by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in the *Tadić* case. Indeed, "what is inhumane, and consequently proscribed, in international wars, cannot but be inhumane and inadmissible in civil strife."[170] This relates not only to the protection of civilians but also to both methods and means of warfare.

284. A convergence between human rights protections and humanitarian law protections is also in operation. The rules contained in article 75 of Additional Protocol I, which reflect customary law, define a series of fundamental guarantees and protections, such as the prohibitions against torture, murder and inhuman conditions of detention, recognized also under human rights law.

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[167] The Public Committee against Torture in Israel v. The Government of Israel (Targeted Killings case).

[168] "The operation in Gaza ...", para. 30.

[169] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p.14.

[170] Prosecutor v. Tadić, case No. IT-94-1-AR72, Decision on the defence motion for interlocutory appeal on jurisdiction of 2 October 1995, para. 119. See also para. 96 ff.

These protections apply to all persons in the power of a party to the conflict "who do not benefit from more favourable treatment" under the Geneva Conventions and its Protocols.

285. The foregoing customary and conventional humanitarian rules are relevant to the investigation of the events that occurred in connection with the military operations of December 2008 and January 2009.

C. International criminal law

286. International criminal law has become a necessary instrument for the enforcement of IHL and IHRL. Criminal proceedings and sanctions have a deterrent function and offer a measure of justice for the victims of violations. The international community increasingly looks to criminal justice as an effective mechanism of accountability and justice in the face of abuse and impunity. The Mission regards the rules and definitions of international criminal law as crucial to the fulfilment of its mandate to look at all violations of IHL and IHRL by all parties to the conflict.

287. Crimes under international law are defined in treaties and also in customary international law. Violations of fundamental humanitarian rules applicable in all types of conflict entail individual criminal responsibility under customary law.[171] They encompass crimes against humanity, war crimes and genocide. Other crimes not necessarily committed as a war crime or crime against humanity are torture and enforced disappearance.

288. The four Geneva Conventions of 1949 establish a regime of enforcement through the definition of grave breaches of some of their provisions relating to protected persons. Grave breaches are premised on the importance of the value under attack and the seriousness of the act or omission that constitutes the breach. Article 147 of the Fourth Geneva Convention defines grave breaches as:

> … those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

289. Article 146 requires States parties to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the listed grave breaches. They are under the obligation "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts."

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[171] Ibid., paras. 128 ff. In paragraph 134, the Appeals Chamber stated: "All of these factors confirm that customary international law imposes criminal liability for serious violations of common article 3, as supplemented by other general principles and rules on the protection of victims of internal armed conflict, and for breaching certain fundamental principles and rules regarding means and methods of combat in civil strife."

290. These and other crimes are also listed in the Rome Statute of the International Criminal Court, article 8 (2) (a) ("grave breaches") and 8 (2) (b) ("other serious violations of the laws and customs applicable in international armed conflict").[172]

291. War crimes are serious breaches of international humanitarian law that apply to armed conflicts and entail individual criminal responsibility under treaty or customary law. War crimes can be committed in the context of armed conflicts of an international character as well as those of a non-international character. This category of crimes includes and/or overlaps with the grave breaches as defined in the four Geneva Conventions.

292. War crimes comprise crimes against protected persons (including wilful killing, torture or other inhuman acts, taking hostages, and collective punishments); crimes against property (including extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly, destroying or seizing property of the enemy, pillaging, and declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party); crimes relating to the use of prohibited methods and means of warfare (including directing an attack against civilians or civilian objects, launching an attack directed against legitimate targets if such attack causes excessive incidental civilian casualties or damage to the environment, improper use of the protective emblems, the use of starvation of civilians as a method of warfare, use of human shields and acts of terror). In addition, article 8 (2) (b) (iii) of the Rome Statute defines as a war crime the direct attack against protected personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission.

293. Crimes against humanity are crimes that shock the conscience of humanity. The Statutes of the International Criminal Tribunal for the former Yugoslavia and of the International Criminal Tribunal for Rwanda provided for the prosecution of crimes against humanity. These crimes comprise murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions and other inhuman acts when they are part of a widespread or systematic attack against any civilian population.[173] Although under the Statute of the International Criminal Tribunal for the former Yugoslavia crimes against humanity must be committed in armed conflict, such a requirement is not part of the customary law definition of the crime.

D. International human rights law

294. Israel has ratified several of the most important international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, ICCPR, ICESCR, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.

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[172] The possible application of the Rome Statute to the conflict in Gaza is still being discussed. The validity under its article 12 (3) of the Palestinian declaration accepting the International Criminal Court's jurisdiction is being evaluated by the Office of the Tribunal's Prosecutor.

[173] See International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Kunarac*, case No. IT-96-23, Judgement of 12 June 2002, para. 85.

295. It is now widely accepted that human rights treaties continue to apply in situations of armed conflict. In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice considered that "the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation…."[174]

296. In its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice held that, in the context of armed conflict, IHL is *lex specialis* in relation to human rights. It is today commonly understood that human rights law would continue to apply as long as it is not modified or set aside by IHL. In any case, the general rule of human rights law does not lose its effectiveness and will remain in the background to inform the application and interpretation of the relevant humanitarian law rule. For instance, the preamble to Additional Protocol II to the Geneva Conventions recalls the protection of international human rights for the human person, supporting the view that IHL and IHRL are operative in situations of conflict.

297. The human rights treaties ratified by Israel are also binding in relation to Israeli conduct in the Occupied Palestinian Territory. Article 2 of ICCPR obliges each State party to respect and to ensure to all individuals "within its territory and subject to its jurisdiction" the rights recognized within it. In the words of the Human Rights Committee, "a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party".[175]

298. The International Court of Justice has also held that ICCPR applies "in respect of acts done by a State in the exercise of its jurisdiction outside its own territory".[176] Accordingly, the Human Rights Committee has considered that ICCPR also applies to the benefit of people within the Occupied Palestinian Territory.[177] The Committees established to monitor compliance with the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women by their States parties have equally determined that Israel's human rights obligations extend to the population of the Occupied Palestinian Territory.[178]

299. The Mission also notes that Israel has not derogated from its obligations under article 4 of ICCPR. Israel's declaration made upon ratification of the Covenant only concerns derogations to article 9 of ICCPR, regarding deprivation of liberty. The state of emergency in Israel has been in force ever since it was proclaimed in 1948. ICESCR does not explicitly allow for derogations in time of public emergency or war.

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[174] Legal Consequences…, para. 106; see also Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996, p. 226, para. 25.

[175] General comment No. 31 (2004), para. 10.

[176] Legal Consequences…, para. 111; see also Case concerning Armed Activities…, para. 216.

[177] "Concluding observations of the Human Rights Committee" (CCPR/CO/78/ISR).

[178] See, for instance, "Concluding observations of the Committee on Economic, Social and Cultural Rights" (E/C.12/1/Add.90).

300. Contemporary interpretation of the Hague Regulations has taken a progressive view on the scope of their application. The International Court of Justice, when concluding that Uganda was the occupying Power in the Ituri region in the Democratic Republic of the Congo, also held that Uganda's obligation to "restore, and ensure, as far as possible, public order and safety" included "the duty to secure respect for the applicable rules of international human rights law and international humanitarian law".[179]

301. In relation to the application of human rights law during the military operations and to the connected events, the Mission wishes to briefly address four issues of legal significance.

302. The first is the impact of the inauguration in 1995 of limited Palestinian self-government and the evacuation of the Gaza Strip by Israel in 2005 on Israel's international obligations. United Nations human rights treaty bodies have continued to hold Israel responsible for implementing its human rights treaty obligations in the Occupied Palestinian Territory after the establishment of Palestinian self-government bodies.[180] Those bodies have not drawn any distinction between Gaza and the West Bank in this regard, the Occupied Palestinian Territory being regarded as a single unit. In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice succinctly addressed the question by noting that, under the International Covenant on Economic, Social and Cultural Rights, Israel is "under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".[181] In a recent report about Gaza, nine special procedures of the Human Rights Council considered that the unilateral disengagement from the Gaza Strip does not relieve Israel "from complying with its human rights obligations towards the population of that territory; Israel remains bound to the extent that the measures it adopts affect the enjoyment of human rights of the residents of the Gaza Strip."[182]

303. Israel most recently argued before the Committee against Torture that it no longer had human rights obligations under the Convention with regard to Gaza due to the effect of the 2005 "disengagement". In rejecting the argument, the Committee stated "the State party maintains control and jurisdiction in many aspects on the occupied Palestinian territories."[183] The Mission agrees that transferring powers and functions to self-governing bodies does not exempt Israel from its obligations to guarantee human rights to people within its jurisdiction or under its effective control. Israel would also have a duty to refrain from actions that obstruct efforts by Palestinian self-governing bodies to guarantee the enjoyment of human rights in the Occupied Palestinian Territory and should facilitate that action.

304. A second issue relates to the human rights obligations of the Palestinian Authority, the de facto authority in the Gaza Strip and other political and military actors. As non-State actors, the

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[179] Case concerning Armed Activities ..., para. 178.

[180] For instance, in its 2003 concluding observations, the Committee on Economic, Social and Cultural Rights reiterated "its regret at the State party's refusal to report on the occupied territories" (E/C.12/1/Add.90, para. 15).

[181] Legal Consequences ..., para. 112.

[182] A/HRC/10/22, para. 20.

[183] "Concluding observations of the Committee against Torture" (CAT/C/ISR/CO/4, para. 11).

question of their human rights obligations must be addressed. It should be noted that the same issue does not arise with regard to IHL obligations, the question being settled some time ago. As the Special Court for Sierra Leone held, "it is well settled that *all* parties to an armed conflict, whether States or non-State actors, are bound by international humanitarian law, even though only States may become parties to international treaties."[184]

305. The relationship between IHL and IHRL is rapidly evolving, in particular in relation to non-State actors' obligations, with the ultimate goal of enhancing the protection of people and to enable them to enjoy their human rights in all circumstances. In the context of the matter within the Mission's mandate, it is clear that non-State actors that exercise government-like functions over a territory have a duty to respect human rights.

306. The Mission notes that the Palestinian Authority, through its public undertakings as well as those of the Palestine Liberation Organization (PLO) and the Palestinian Legislative Council, has declared its commitment to respect international human rights law in several instances, including in the context of international agreements. This commitment is also contained in the Palestinian Basic Law.[185]

307. The obligations of the Gaza authorities may be viewed through a different lens but leading to the same result. The Gaza authorities also reiterated to the Mission their commitments to respect human rights. Hamas has also made a series of unilateral declarations of respect for human rights. Furthermore, the Palestinian Basic Law with its many human rights provisions also applies in the Gaza Strip.[186]

308. A third issue to be addressed here relates to the right to self-determination and its application to the definition of combatant status and its impact on the principle of distinction. Armed conflicts opposing national liberation movements and/or resistance movements against colonialism and occupation are regarded as international armed conflicts by Additional Protocol I, article 1 (4). Under international law, notably Additional Protocol I to the Geneva Conventions, any action of resistance pursuant to the right to self-determination should be exercised with full respect of other human rights and IHL.

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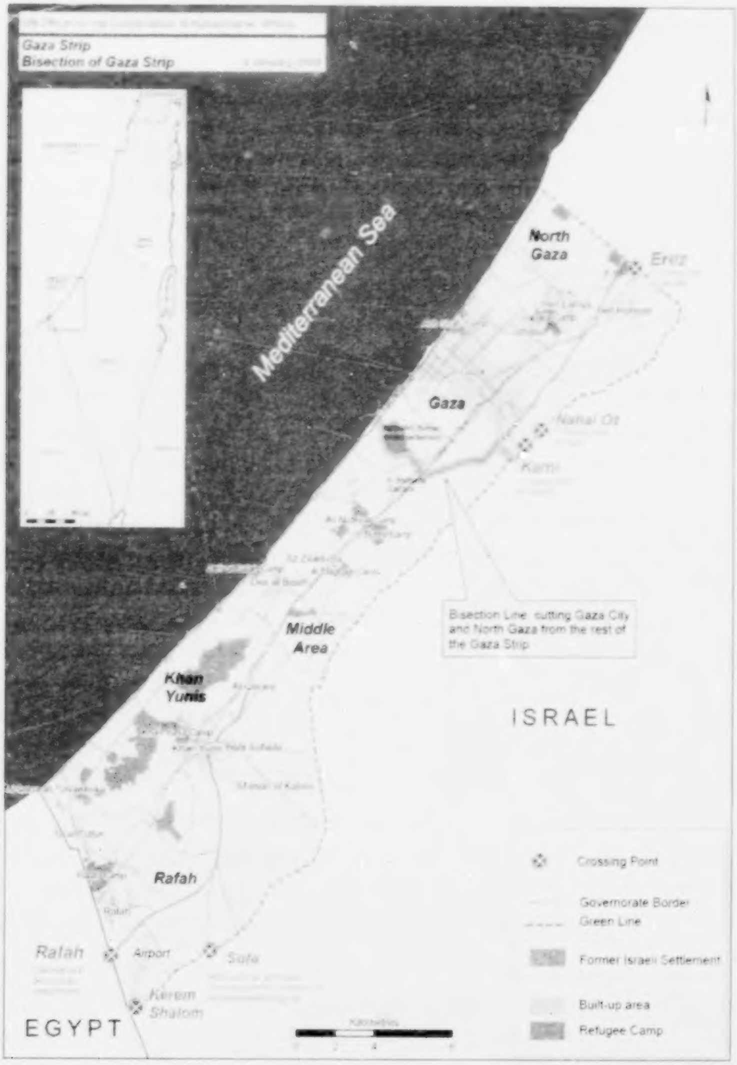
[184] See for instance, Prosecutor v. Sam Hinga Norman, case SCSL-2004-14-AR72(E), Decision on preliminary motion based on lack of jurisdiction (child recruitment) (31 May 2004), para. 22.

[185] Legal Consequences…, para. 91; A/HRC/10/22, para. 21; Barcelona Declaration, 27-28 November 1995, available at: http://www.euromedrights.net/281. The Palestinian Basic Law can be found at http://www.palestinianbasiclaw.org/2002-basic-law. See also "Report of the High Commissioner for Human Rights on the implementation on Human Rights Council resolution 7/1" (A/HRC/8/17, para. 8).

[186] Meeting and correspondence with the Mission. In this respect nine special procedures mandate holders have stated: "non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control" (A/HRC/10/22, para. 21). This view follows the statement in the same line by four other special procedures mandate holders who visited Lebanon in the aftermath of the 2006 war: "Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights … It is especially appropriate and feasible to call for an armed group to respect human rights norms when it exercises significant control over territory and population and has an identifiable political structure." (A/HRC/2/7, para. 19). See also A/HRC/10/22, para. 9.

309. Finally, it is also useful to briefly recall that States not party to an armed conflict have responsibilities and a crucial role to play for the protection of civilians and those *hors de combat* and for the protection of their rights. Under article 1 common to the Geneva Conventions 1949, the "High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances." This provision entails obligations not only in relation to actors and conduct within the jurisdiction of each State but also in relation to the international enforcement of the Conventions. States parties to the Geneva Conventions also have the obligation to facilitate the passage of humanitarian relief and a role to play in the provision of such assistance for the protected population in case of need (articles 23 and 59 of the Fourth Geneva Convention).

310. To conclude, the Mission wishes to emphasize that all parties to an armed conflict have the obligation to respect the enjoyment of human rights by all.


Gaza Strip
Bisection of Gaza Strip
Mediterranean Sea
North Gaza
Erez
Gaza
Nahal Oz
Karni
Middle Area
Khan Yunis
Rafah
Rafah
Airport
Sufa
Kerem Shalom
EGYPT
ISRAEL
Bisection Line cutting Gaza City and North Gaza from the rest of the Gaza Strip
Crossing Point
Governorate Border
Green Line
Former Israeli Settlement
Built-up area
Refugee Camp
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PART TWO: OCCUPIED PALESTINIAN TERRITORY

THE GAZA STRIP

SECTION A: MILITARY OPERATIONS

V. THE BLOCKADE: INTRODUCTION AND OVERVIEW

311. The military operations of 28 December to 19 January 2009 and their impact cannot be fully evaluated without taking account of the context and the prevailing living conditions at the time they began. In material respects, the military hostilities were a culmination of the long process of economic and political isolation imposed on the Gaza Strip by Israel, which is generally described as a blockade. This chapter provides an overview of the blockade, while chapter XVII provides a detailed analysis of the cumulative impact of the blockade and the military operations on the people in Gaza and their human rights.

312. The series of economic and political measures imposed against the Gaza Strip began around February 2006 with the Hamas electoral victory in the legislative elections. This was also accompanied by the withholding of financial support for the Gaza Strip by some donor countries and actions of other countries that amounted to open or tacit support of the Israeli blockade. Hamas took over effective power in the Gaza Strip on 15 June 2007. Shortly thereafter Israel declared the Gaza Strip a "hostile territory,"[187] enacting a series of economic, social and military measures purportedly designed to isolate and strangle Hamas. These have made a deep impact on the population's living standards.

313. The blockade comprises measures such as the closure of border crossings, sometimes completely for a number of days, for people, goods and services, and for the provision of fuel and electricity. The closure has had severe effects on trade and general business activity, agriculture and industry in the Gaza Strip. Electricity and fuel that are provided from Israel are essential for a broad range of activities from business to education, health services, industry and agriculture. Further limits to the fishing area in the sea adjacent to the Gaza Strip were fixed and enforced by Israel, negatively impacting on fishing activities and the livelihood of the fishing community. Israel also established a buffer zone of variable and uncertain width along the border, together with a sizeable no-go area in the northern part of the Gaza Strip where some Israeli settlements used to be situated. This no-go area is in practice an enlarged buffer zone in the northern part of the Gaza Strip where people cannot go. The creation of the buffer zone has forced the relocation of a number of factories from this area closer to Gaza City, causing serious environmental concerns and potential health hazards for the population. People's movements have also been drastically restricted, with only a few businesspeople allowed to cross on a very irregular and unpredictable basis.

314. Because of the occupation, which created so many ties of dependence, and for other geographic, political and historical reasons, the availability of goods and services as well as the carrying-on of daily life in the Gaza Strip are highly dependent on Israel and its policies

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[187] http://www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm.

regarding the area. Food and other consumable items as well as fuel, electricity, construction materials and other items are traded from or through Israel. Israel also serves as the communication channel for the population of Gaza with the rest of the Occupied Palestinian Territory and the world, including for purposes of education and exchange programmes. There are five crossing points between Israel and the Gaza Strip: Erez (basically dedicated to the transit of people), Nahal Oz (for fuel), Karni (for grains), Kerem Shalom (for goods) and Sufa (for goods). Israeli control of these crossings has always been restrictive for the Gaza population. Since the beginning of the blockade, and particularly during and after the military operation, not only has the measure of restriction increased, but control has been exercised arbitrarily, resulting in uncertainty of access even for those items purportedly allowed entry by Israel.

315. Movement of people through the Erez crossing to Israel and the Rafah crossing to Egypt has been almost completely blocked. Exceptions include unpredictable and irregular permission for emergency medical evacuations, access to diplomats and international humanitarian staff and only limited access to some businesspeople.

316. The movement of goods has been restricted to imports of basic humanitarian supplies through the Kerem Shalom crossing point as well as to a limited quantity of fuel. The quantities of goods allowed into the Gaza Strip have not only been insufficient to meet local demands, they also exclude several items essential for the manufacturing of goods and the processing of food products, as well as many other goods that are needed. This is compounded by the unpredictable way in which crossings are managed. Neither the list of items allowed into the Gaza Strip nor the criteria for their selection are made known to the public.

317. Before the military operation, the blockade had resulted in a significant reduction in the number of trucks allowed through the crossings. The number of trucks is considered a fair measure of the amount of imports into or exports from the Gaza Strip. This number increased slightly during the period of calm between June and November 2008, but declined sharply again in November, due to the resumption of hostilities following the Israeli military incursion. The daily average of truckloads crossing the border in November–December 2008 was between 23 and 30, but it increased after the start of military hostilities to up to five times that number during January 2009.[188] However, at no time was it close to what it had been prior to June 2007 or to the amount actually necessary to meet the needs of the population.

318. The 2005 Agreement of Movement and Access called for a daily flow of some 400 trucks in and out of Gaza by the end of 2006, which was already lower than before the second intifada, but not even that level was ever reached.[189] Information supplied to the Mission reveals that imports into and exports from the Gaza Strip before the closure in 2007 reached a monthly average of 10,400 and 1,380 truckloads, respectively. This declined to about 2,834 truckloads of imports and no exports after the recent military operations. Immediately after the operations, there was only one isolated instance in which exports of flowers were allowed from the Gaza

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[188] OCHA, The Humanitarian Monitor, No. 33 (January 2009).

[189] International Labour Office, "The situation of workers in the occupied Arab territories", Report of the Director-General to the International Labour Conference, 98th session, 2009, appendix, para. 24.

Strip in March 2009. Some 134 truckloads of cash crops were exported in total between June 2007 and May 2009.[190]

319. In effect, economic activity in the Gaza Strip was severely affected because of the blockade. Since the military operation, the economy has almost come to a standstill. The private sector, particularly the manufacturing industry, has suffered irreparable damage.

320. The blockade and freeze on the movement of goods imposed by Israel have spurred a black market economy in the Gaza Strip that provides basic consumables but is unreliable and unaffordable for the majority of the people. The tunnels built under the Gaza-Egypt border have become a lifeline for the Gaza economy and the people. Increasing amounts of fuel (benzine and diesel) come through those tunnels as well as consumables. While for the Gaza population this is a necessary means of survival in the circumstances, the black market is likely to hold back economic recovery and sustainability, even when the blockade is lifted.

321. The blockade has also included measures relating to access to the sea and airspace. Under the Oslo Accords, the fishing zone limit was set at 20 nautical miles. However, Israel set the limit unilaterally at 6 nautical miles and maintained this limit from October 2006 to January 2009, when it further restricted it to 3 nautical miles. The only airfield in Gaza has been closed and a project to rebuild the small airport was suspended after the seizure of power by Hamas. Israel keeps total control over Gaza's airspace.

322. In mid-December 2008, following an Israeli military incursion into the Gaza Strip and rockets fired into Israel by Hamas, all the crossings were totally closed for eight days.[191] Other military or militant activities in areas near the crossings have also led to total closures over certain periods of time. Total and partial closures have significantly contributed to an emergency situation that became a full-fledged humanitarian crisis after the military operations of December 2008–January 2009. During December 2008, UNRWA had to suspend its delivery of food assistance due to the total depletion of its food stocks. Other humanitarian agencies had to reduce or postpone delivery of food and other forms of assistance. The unavailability of banknotes as a result of an Israeli prohibition also prevented humanitarian agencies from implementing "cash for work" or similar programmes over lengthy periods of time.[192]

323. The implementation of the restrictive measures as part of the blockade of the Gaza Strip created not only an emergency situation but also significantly weakened the capacities of the health, water and emergency sectors in Gaza to adequately respond to a worsening situation.[193] The impact on the local economy further reduced the resilience and coping capacities of the local population and has aggravated the effects of the war on livelihoods and living standards (see below, chap. XVII).

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[190] Information submitted by PalTrade, "Gaza private sector status", 18 June 2009. The Mission also acknowledges the information provided by the Palestinian Authority in its reply to questions from the Mission, 5 august 2009.

[191] The Humanitarian Monitor, No. 32.

[192] The Humanitarian Monitor, No. 32, p. 5.

[193] This impact was noted and analysed in "Report of the high-level fact-finding mission to Beit Hanoun established under Council resolution S-3/1" (A/HRC/9/26, paras. 55 ff).

324. The Mission asked the Government of Israel to provide information in relation to the blockade on the Gaza Strip. It requested information on the criteria applied to determine which good are or are not allowed to enter the Gaza Strip, the reasons for restricting or preventing cash and bank transfers, the reasons for imposing restrictions on the ability of Gazans to leave the Gaza Strip, including for urgent medical reasons, the reasons for the highly restrictive policy permit applied to international donors, humanitarian and human rights organizations wishing to enter the Gaza Strip, and the reasons and legal basis for establishing a limited fishing zone. No reply was received on any of these questions.

325. The legality of some of the measures imposed by the Government of Israel (the reduction in the supply of electricity and fuel) was the subject of a petition to the Supreme Court of Israel.[194] The petitioners comprised a group of NGOs operating within Israel together with Palestinian citizens and groups who argued that the planned cuts in the supply of fuel and electricity were inconsistent with the obligations of Israel under the Fourth Geneva Convention relating to the protection of civilians.[195] The Court's ruling recognizes that Israel has obligations under humanitarian law vis-à-vis the Gaza Strip under which the intended supply of fuel and electricity was considered "capable of satisfying the essential humanitarian needs of the Gaza Strip at the present". The Court, however, did not indicate what would constitute "essential humanitarian needs" and appears to have left those details for the authorities to determine.

326. The Mission holds the view that Israel continues to be duty-bound under the Fourth Geneva Convention and to the full extent of the means available to it to ensure the supply of foodstuff, medical and hospital items and others to meet the humanitarian needs of the population of the Gaza Strip without qualification. Furthermore, the Mission notes the information it received regarding the lack of compliance by the Government of Israel even with the minimum levels set by the Israeli Court, and in this regard observes that the Government retains wide discretion about the timing and manner of delivering fuel and electricity supplies to the Gaza Strip, and that this discretion appears to have been exercised capriciously and arbitrarily.

VI. OVERVIEW OF MILITARY OPERATIONS CONDUCTED BY ISRAEL IN GAZA BETWEEN 27 DECEMBER 2008 AND 18 JANUARY 2009 AND DATA ON CASUALTIES

327. This chapter provides an overview for the purposes of identifying the key parties in the conduct of the military operations and their dynamics, and to indicate which incidents occurred during those phases which are the subject of detailed analysis in this report. The focus is on the Israeli military operations in Gaza.

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[194] Jaber Al-Bassiouni Ahmed et al. v. Prime Minister and Minister of Defense, case No. 9132/07, Judgement of 30 January 2008, available at http://elyon1.court.gov.il/Files_ENG/07/320/091/n25/07091320.n25.pdf.

[195] Petition to stop electricity and fuel cuts to the Gaza Strip, 28 November 2007. The petition, related affidavits, excerpts from the State's answers and excerpts from the Court's decision are all available at: http://www.gisha.org/index.php?intLanguage=2&intSiteSN=110&intItemId=742.

A. The parties relevant to the conduct of military activities in Gaza between 27 December 2008 and 18 January 2009

1. The Israeli armed forces

328. The information available shows that Israel deployed its navy, air force and army in the operation it codenamed "Operation Cast Lead".

329. The navy was used in part to shell the Gaza coast during the military operations.

330. The air force was also used throughout the military operations in a way that appears in its own view to have been innovative. Having been responsible for the vast majority of operational activities in the first week, it continued to play an important role in assisting and covering the ground forces from 3 January to 18 January 2009.[196]

331. The army was responsible for the ground invasion, which began on 3 January 2009. The available information indicates that the Golani, Givati and Paratrooper Brigades and five Armoured Corps Brigades were involved. Assaults on three fronts with combined armour and infantry brigades were also augmented by specialist Arabic-language, intelligence and, in particular, combat engineer troops. The engineer troops equipped with armoured D-9 bulldozers were also trained in operations to counter improvised explosive devices (IEDs). Forward elements of these attack formations could rely on direct support from the air force to call air strikes or to direct them, to call in helicopter missile attacks and to direct their own attached missile-mounted UAVs.[197]

2. Palestinian armed groups

332. The Palestinian armed factions operating in the Gaza Strip, and claiming responsibility for the majority of the rocket and mortar launchings, are the Hamas' Izz ad-Din al-Qassam Brigades,[198] the al-Aqsa Martyrs' Brigades, the Islamic Jihad, the Abu Ali Mustafa Brigades,[199] which are the military wing of the Popular Front for the Liberation of Palestine (PFLP), and al-Naser Salah ad-Din Brigades, which are the military wing of the Popular Resistance Committees (PRC).[200] PRC is a coalition of different armed factions that oppose what they perceive as the Palestinian Authority's and Fatah's conciliatory approach towards Israel.

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[196] See Anthony H. Cordesman, "The 'Gaza war': A strategic analysis", Centre for Strategic and International Studies (2009), p. 41.

[197] Alon Ben-David, "Israeli offensive seeks 'new security reality' in Gaza", Jane's Defence Weekly, 8 January 2009; Jane's 'Sentinel' Services, "Country Risk Assessments – Israel", 4 February 2009.

[198] Named after a Syrian who worked with displaced Palestinians in what is now northern Israel, and died in a clash with British troops in 1935, sparking the 1936–39 Palestinian revolt.

[199] The Abu Ali Mustafa Brigades claimed responsibility for launching 177 rockets and 115 mortars on several towns and villages inside Israel during the period of the military operations in Gaza.

See http://www.kataebabuali.ps/inf2/articles-action-show-id-223.htm.

[200] During the period of the military operations in Gaza, al-Naser Salah ad-Din Brigades claimed responsibility for the launching of 132 rockets and 88 mortars. See http://www.moqawmh.com/moqa/view.php?view=1&id=300.

B. The phases of the hostilities

1. Air phase[201]

333. The Israeli armed forces began the military operations with a week-long air attack, from 27 December until 3 January 2009. One study suggests that they had drawn up a list of 603 targets to be hit as they belonged to Hamas suspects or were part of what Israel viewed as the Hamas infrastructure. The study claims that a senior Israeli officer reported that all 603 targets had been hit before the end of the fourth day of the aerial operations in the first week. Officially, the spokesman of the Israeli forces claimed that 526 targets had been hit by 31 December 2008.[202]

334. An analysis of the strikes in a report of the Palestinian Centre for Human Rights gives the following breakdown.

335. "IOF [Israeli occupation forces] have launched at least 300 air and sea strikes against the Gaza Strip. These strikes have targeted 37 houses; 67 security and training sites; 20 workshops; 25 public and private institutions; seven mosques; and three educational institutions. The public institutions that have been bombarded are: the compound of ministries, the building of the Palestinian Legislative Council, the building of the cabinet in Gaza City; the buildings of the agricultural control department and the Municipality of Bani Suhaila in Khan Yunis; the buildings of Rafah Municipality and Governorate. The air strikes have targeted also four money exchange shops, a clinic, three fishing harbours, the Islamic University and two schools."[203]

336. Of the incidents addressed in detail in this report, the following occurred during this phase:

- The attack on Arafat City Police Station;
- Attacks on four other police stations, one in Deir al-Balah and three in Gaza City;
- The attack on the Palestinian Legislative Council building and the Ministry of Justice;
- The attack on Gaza main prison in the al-Sarayah complex, Gaza City.

337. Israeli air force activities continued throughout the military operations. In total, it has been suggested that between 2,300 and 3,000 sorties were flown.[204]

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[201] Although principally recognized as an aerial phase, there was a significant contribution from the Israeli navy not only in the first week.

[202] Cordesman, op. cit., p. 30.

[203] PCHR, "Weekly report on Israeli human rights violations in the Occupied Palestinian Territory", No. 51/2008 (24–31 December 2008), available at:
http://www.pchrgaza.org/files/W_report/English/2008/pdf/weekly%20report%2051.pdf.

[204] Cordesman, op. cit., p. 41. He cites Lt. Gen. Ashkenazi saying that the air force flew 2,300 successful air strikes but notes other senior officials told him the real number was closer to 3,000.

2. The air-land phase

338. Around 3 January 2009 Israeli ground troops entered Gaza from the north and east. One study suggests that "the war was fought largely by the southern Command using brigade teams that operated with a high degree of independence and freedom to adapt and innovate".[205]

339. One of the key initial objectives described by one soldier involved was to divide the Gaza Strip into two parts, i.e. to split and fragment it, with Nitzarim constituting the midpoint.[206] The division therefore ran from the Karni crossing point to the coast in a south-westerly direction. After creating the split, the Israeli armed forces concentrated all of their ground forces in the north. Targets in the south were hit from the air, such as in Rafah.

340. At least in the initial phase it appears forces from the Givati Brigade entered from the east and approached Gaza City from the south. It is understood that forces from the Armoured

341. Corps Brigade also operated in this area but probably at a later stage.[207] Zeytoun, on the southern outskirts of Gaza, took the brunt of these brigade operations, with incidents of attacks on the civilian population.

342. It appears that those with primary responsibility in the north of Gaza, especially around Beit Lahia and al-Atatra, included forces from the Golani Brigade.

343. The forces focusing on the area between Gaza City and the northern section, especially in Jabaliyah, appear to have been drawn largely from the Paratrooper Brigade.

344. The movement into the south of Gaza City reached at least as far as Zeytoun on 3 January 2009. Some of the troops entering there on that day appear to have been brought in by helicopter rather than arriving by land. Israeli armed forces maintained a presence in Zeytoun until the final withdrawal.[208] It is understood that the original forces that entered Zeytoun were at least partially replaced by other troops at some point, but it is not known if any of the original forces remained in the area throughout the period.[209]

345. In the other brigade areas regular troops were augmented or replaced by reservists who were called up after the initial ground attacks.

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[205] Ibid., p. 39.

[206] Breaking the Silence, *Soldiers' Testimonies from Operation Cast Lead, Gaza 2009*, testimony 20, p. 48, available at: http://www.breakingthesilence.org.il/oferet/ENGLISH_oferet.pdf.

[207] *Soldiers' Testimonies* ..., testimony 2, p. 9.

[208] See accounts of the attack on the Sawafeary chicken farm attack in chapter XIII and the taking of the Juha house in Zaytoun in chapter IX.

[209] *Soldiers' Testimonies* ..., testimony 2, p. 9.

346. Zeytoun was an area of particularly intense action by Israeli forces, yet there are almost no indications of armed resistance in the area at the time.[210]

347. Among the issues of particular concern to the Mission in Zeytoun are the killings of the Samouni family, the mass destruction in the area, including the systematic demolition of the Sawafeary chicken farms, and the air strike that killed 22 members of the al-Daya family.

348. The forces in Zeytoun also appear to have been responsible for the push towards the area around Tal el-Hawa and Rimal in the south-west of Gaza City, about three kilometres from Zeytoun. The Mission has information that indicates that tanks took up positions in and around Tal el-Hawa around 4 and 5 January. Sources indicate that there was a presence there throughout the hostilities, as also evidenced by the artillery fire from around this area on 14 and 15 January on the compound of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and al-Quds hospital, both of which the Mission addresses in detail.

349. The forces responsible for the execution of the Israeli plan in the north-east of the Gaza Strip included the Golani Brigade. Among the areas of special concern in this regard are al-Atatra and Beit Lahia. Various witnesses indicate that in the past there has at times been some armed presence in the area. Information taken from websites apparently belonging to Palestinian armed groups indicates that these were areas of some resistance. The Mission heard from several witnesses about the scale of the destruction that occurred there as a result of artillery fire after the ground phase began on 3 January. Information indicates a sustained attack with aerial and artillery fire from 3 to 8 January. The Mission addresses a number of particular cases that occurred in this context, such as the alleged use of human shields, the alleged widespread mistreatment of civilians, including detentions, and transfers of large numbers to Israeli prisons in unlawful circumstances.

350. In the Jabaliyah area, located between Beit Lahia and Gaza City, the Mission understands that at least for part of the time there was a significant presence of the Paratrooper Brigade.[211] At the beginning of the ground phase it is noted that an Israeli projectile struck the al-Maqadmah mosque, killing at least 15 civilians. A few days later the al-Fakhura Street incident occurred in the same area when a series of mortars fired by the Israeli armed forces killed at least 35 people.

351. Around 15 January the Israeli armed forces began withdrawing from their positions in the main areas described above. As they did so, there appeared to be a practice of systematically demolishing a large number of structures, including houses, water installations, such as tanks on the roofs of houses, and of agricultural land. A renewed aerial phase in Rafah was also conducted in the last few days of the military operations. Whereas the strikes in the first week appear to have been relatively selective, the last few days saw an increase in the number of

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[210] See Jerusalem Center for Public Affairs, "The hidden dimension of Palestinian war casualties in operation 'cast lead': Hamas fire on Palestinian areas", by Lt. Col. (res.) Jonathan Dahoah Halevi.

[211] See, for example, Haartez, "IDF investigation shows errant mortar hit UN building in Gaza", 11 January 2009, available at: http://www.haaretz.com/hasen/spages/1054284.html.

strikes with several hundred targets hit, causing not only very substantial damage to buildings but also, according to some, underground structural damage.[212]

C. Data on casualties during the Israeli military operations in Gaza from 28 December 2008 to 17 January 2009

1. Palestinian casualties

352. The Mission received statistics on the fatalities of the military operations from the Gaza authorities, specifically from the Central Commission for Documentation and Pursuit of Israeli War Criminals (TAWTHEQ),[213] as well as from PCHR,[214] Al Mezan[215] and B'Tselem.[216] The first three also provided lists of all the persons killed in the military operations, with their names, sex, age, address, occupation, and place and date of the fatal attack. Another NGO, Defence for Children International – Palestine Section,[217] provided a list of all the children killed.

353. The three lists give different numbers. According to TAWTHEQ, 1,444 persons were killed. The two Palestinian NGOs provide a lower number, 1,417 victims according to PCHR and 1,409 according to Al Mezan, while B'Tselem mentions 1,387 victims. The Mission has not cross-checked the three lists. TAWTHEQ, PCHR, Al Mezan and B'Tselem also provide disaggregated data.

354. TAWTHEQ reports that 341 of those killed were children (under 18), 248 members of the police, 11 members of the Internal Security Service and 5 members of the National Security Service. It provides no figures for the number of combatants killed.

355. PCHR divides the overall 1,417 victims into 926 civilians, 255 police[218] and 236 combatants.[219] It reports that 313 of the dead were children and 116 women.

356. Al Mezan reports that overall 1,409 persons were killed during the military operations, of whom 237 were combatants (including 13 under-age combatants) and 1,172 non-combatants, including 342 children, 111 women and 136 members of the police.[220] Thus, according to PCHR

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[212] UNOSAT Report.

[213] These lists were prepared by the Gaza authorities' Ministry of Justice, TAWTHEQ, The Central Commission for Documentation and Pursuit of Israeli War Criminals and submitted to the Mission.

[214] The list is available at: http://www.pchrgaza.org/files/PressR/English/2008/list.pdf.

[215] Al Mezan Center for Human Rights, "Cast lead offensive in numbers", available at: http://www.mezan.org/upload/8941.pdf. In September 2009 Al Mezan published an updated list of victims with 1,412 names.

[216] B'Tselem, "B'Tselem publishes complete fatality figures from operation cast lead", press release, 9 September 2009, available at: http://www.btselem.org/English/Press_Releases/20090909.asp.

[217] The list is available at http://www.dci-pal.org/english/display.cfm?DocId=917&CategoryId=1.

[218] In the PCHR list of victims the police officers are classified as civilians.

[219] PCHR, "Confirmed figures reveal the true extent of the destruction inflicted upon the Gaza Strip; Israel's offensive resulted in 1,417 dead, including 926 civilians, 255 police officers, and 236 fighters", press release, 12 March 2009, available at: http://www.pchrgaza.org/files/PressR/English/2008/36-2009.html

[220] "Cast lead offensive in numbers…", p. 7.

and Al Mezan, fewer than 17 per cent of the Palestinians killed during the military operations were combatants.

357. B'Tselem states that, of the 1,387 Palestinians who were killed, 773 did not take part in the hostilities, including 320 minors and 109 women over the age of 18. Of those killed, 330 took part in the hostilities and 248 were Palestinian police officers, most of whom were killed in aerial bombings of police stations on the first day of the operations. For 36 people B'Tselem could not determine whether they had participated in the hostilities or not.

358. According to Defence for Children International, 348 children were killed during the military operations.[221]

359. The Israeli armed forces claim that 1,166 Palestinians were killed during the military operations "according to the data gathered by the Research Department of the Israel Defense Intelligence". They allege that "709 of them are identified as Hamas terror operatives", 295 are "uninvolved Palestinians", while the remaining 162 are "men that have not yet been attributed to any organization".[222] Of the 295 "uninvolved Palestinians", 89 were children under the age of 16 and 49 women. According to these figures, at least 60 per cent, and possibly as many as three out of four, of those killed were combatants. The Mission notes, however, that the Israeli Government has not published a list of victims or other data supporting its assertions, nor has it, to the Mission's knowledge, explained the divergence between its statistics and those published by three Palestinian sources, except insofar as the classification of policemen as combatants is concerned.[223]

360. The Mission, not having investigated all incidents involving loss of life in the Gaza Strip, will not make findings regarding the overall number of persons killed nor regarding the percentage of civilians among those killed. The incidents it did investigate, and on which it will make findings based on the information it gathered, involve the death of more than 220 persons, at least 47 of them children and 19 adult women.

361. The Mission notes that the statistics from non-governmental sources are generally consistent. Statistics alleging that fewer than one out of five persons killed in an armed conflict was a combatant, such as those provided by PCHR and Al Mezan as a result of months of field research,[224] raise very serious concerns about the way Israel conducted the military operations in Gaza. The counterclaims published by the Government of Israel fall far short of international law standards.

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[221] Defence for Children International confirmed the deaths of another five children caused indirectly by the military operations.

[222] IDF spokesperson, "Majority of Palestinians killed in operation cast lead: Terror operatives", 26 March 2009, available at http://dover.idf.il/IDF/English/News/today/09/03/2602.htm; see also *The Jerusalem Post*, "IDF releases cast lead casualty number", 26 March 2009.

[223] On the question of whether Gaza policemen were civilians or combatants, see chap. VII.

[224] The Mission notes that the figures from B'Tselem, which distinguish between casualties who took part in the hostilities and those who did not, lead to similar results. If the policemen were added to those who did not take part in hostilities (as Al Mezan and PCHR do in adding the policemen to the civilians killed), the B'Tselem statistics would indicate that approximately one in four Palestinians killed was taking part in hostilities.

362. The Mission also notes that – as the Government of Israel argues at length[225] – there are circumstances under international humanitarian law in which military actions resulting in the loss of civilian life would not be unlawful. These include attacks directed against military objectives that comply with the principles of discrimination and proportionality, but nonetheless kill civilians. They also include the killing of persons who, though not members of an armed group, participate directly in the hostilities. The reportedly exceedingly high percentage of civilians among those killed raises concerns about the precautions taken by Israel in launching attacks as well as the legality of many of the attacks, as elaborated further in this report with regard to the specific incidents investigated by the Mission.

363. The Mission finally notes that it cannot entirely discount the possibility that Palestinian civilians may have been killed as a result of fire by Palestinian armed groups in encounters with the Israeli armed forces, as argued in a submission to the Mission,[226] although it has not encountered any information suggesting that this was the case.[227]

2. Israeli casualties

364. The Israeli Ministry of Foreign Affairs reported that, during the military operations from 27 December 2008 to 18 January 2009, there were four Israeli casualties[228] in southern Israel (all adults), of whom three were civilians and one was a soldier.[229] In addition, nine Israeli soldiers were killed during the fighting inside the Gaza Strip, four of whom by friendly fire.[230] B'Teslem[231] confirmed these numbers, stating that during the operations Palestinians killed nine Israelis, of whom three civilians, who were reportedly killed by Qassam and Grad rocket fire, and six members of the security forces, while another four soldiers were killed by friendly fire.[232]

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[225] "The operation in Gaza…", paras. 89–141.

[226] "The hidden dimension of Palestinian war casualties…". This submission is examined in chapter VIII below.

[227] The Mission has, however, investigated cases of alleged extrajudicial executions of Palestinians by Palestinian armed groups during the military operations (see chap. XIX).

[228] http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_strikes_back_against_Hamas_terror_infrastructure_Gaza_27-Dec-2008.htm.

[229] http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Victims_Hamas_rocket_fire_Hamas_ends_calm_Dec-2008.htm.

[230] http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/IDF_soldiers_killed_Operation_Cast_Lead.htm.

[231] B'Tselem, "B'Tselem's investigation of fatalities in Operation Cast Lead", p. 2, available at: http://www.btselem.org/Download/20090909_Cast_Lead_Fatalities_Eng.pdf.

[232] Al-Qassam Brigades' website reports that, during the conflict, they killed 102 Israeli soldiers ("The outcome of al-Qassam operations during the Battle of *al-Furqan*" (in Arabic), available at: http://www.alqassam.ps/arabic/special_files/al-furqan/30.pdf). On 19 January 2009, Abu Obeida, a spokesperson for the group, stated that "Israel lost 'at least 80 soldiers' in the fighting". See al-Arabiya News Channel, "Hamas says only 48 fighters slain in Israel war", 19 January 2009, available at: http://www.alarabiya.net/articles/2009/01/19/64513.html. The large discrepancy in the data confirms the Mission's observations below in the report about the reliability of the information about the Gaza military operations posted on websites of al-Qassam and other Palestinian armed groups.

VII. ATTACKS ON GOVERNMENT BUILDINGS AND POLICE

A. Deliberate attacks on Gaza government infrastructure

1. Overview of damage to Gaza government buildings

365. In its early recovery and reconstruction plan for Gaza, the Palestinian Authority states that "seven government institutions were either completely or partially levelled (including the Government Palace, the Archives building, the General Personnel Council, and the Presidential Compound), and the Ministries of Interior, Justice and Culture were either partially or entirely destroyed, along with their associated compounds. In addition, 19 municipal facilities were damaged and 11 were totally destroyed, including commercial centres such as markets, slaughterhouses and stores."[233]

2. The Israeli air strikes on the Gaza main prison and on the Palestinian Legislative Council building

366. The Mission visited two locations where government buildings were destroyed by Israeli air strikes: the Palestinian Legislative Council building and the main prison in the al-Saraya complex in Gaza City. In addition, the Mission visited six police stations, which will be discussed separately below.

367. The Mission visited the remains of the Gaza City main prison and interviewed two senior police officers who were, according to their testimony, eyewitnesses to the attack. The Mission also reviewed reports on the attack from other sources based on the testimony of prisoners. It furthermore addressed questions to the Government of Israel regarding the military advantage pursued in attacking the Palestinian Legislative Council building and the main prison in Gaza City, but received no reply.

368. The main prison was located in a densely built-up area of Gaza City in the al-Saraya complex of buildings occupied by government departments, including the Ministries of Education, Transport and the Interior. The prison itself was an old building, several stories high, reportedly used as a prison by successive authorities in charge of Gaza during the previous and present centuries. It held both common offenders and political detainees.

369. While there were some discrepancies in the different accounts of this incident, the Mission was able to ascertain that the complex was attacked at 11 a.m. on 28 December 2008, on the second day of the air strikes by Israel. At the time of the attack between 200 and 300 prisoners were held in the facility, most of the almost 700 prisoners having been released in the days before the strike.[234] The accounts given by officials regarding the number of fatalities and injured

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[233] Palestinian National Authority, Palestinian National Early Recovery and Reconstruction Plan for Gaza 2009-2010, March 2009, p. 41.

[234] According to statements by the police to the Mission, around 400 minor offenders had been released by the authorities to reduce overcrowding, so that when the hostilities started about 300 prisoners remained there. According to a NGO report based on the testimony of prisoners, "authorities released about 580 of the prisoners after the bombings started [i.e. on 27 December 2008], but kept in custody roughly 115 alleged collaborators with Israel, about 70 Fatah supporters held on various charges, and some persons convicted of criminal offences who had

among the prisoners are contradicted by NGO reports and the Mission heard allegations of extrajudicial executions of escaping prisoners by, or at the behest of, the Gaza authorities, which the Mission deals with in chapter XIX. Police officials told the Mission that one prison guard was killed and several injured by the Israeli strike, as the first missile hit the guards' quarters, and that no prisoners were seriously injured. The guards had opened the prison doors immediately after the first strike. Others reported that "some prisoners were killed in the bombing, while others escaped the destroyed building."[235] A number of prisoners injured in the attack went to al-Shifa hospital in Gaza City for treatment after escaping from the prison.

370. Despite the limited number of casualties that may have occurred, the high probability of more serious loss of life and of injuries in an attack on a populated prison facility could not have been discounted by the Israeli forces. The Mission has taken note of the assessment of the Israeli air force that 99 per cent of the strikes it carried out were accurate.[236] In the light of this claim and in the absence of explanations to the contrary from the Israeli Government, it can only be concluded that the prison was the intended target of the strike. There is no indication from the information gathered on the incident and an inspection of the site that there was any cause for considering the prison building a "military objective".

371. The Palestinian Legislative Council building in central Gaza City was, according to information provided by the Israeli armed forces on their official web site, attacked on 31 December 2008. Mr. Ahmad Bahr, then Acting Speaker of the Palestinian Legislative Council in Gaza, stated to the Mission that it was hit by three missiles launched from fighter planes. The Mission visited the damaged assembly room. It also saw the rubble of the severely damaged three-storey building of the Parliament, which had been completed two years before. It was explained to the Mission that the new building contained a videoconferencing room which allowed the Gazan parliamentarians to hold joint sessions with the members of Parliament based in Ramallah. No casualties as a result of the strike on the Legislative Council building were reported to the Mission.

372. The Mission notes that the Israeli armed forces acknowledged in their "Summary of overnight events" of 1 January 2009 that:

> The IAF and Israel Naval Forces struck around 20 Hamas targets throughout the Gaza Strip during late night and early morning hours (Dec. 31).
>
> Among the sites targeted were.
>
> The buildings housing Hamas' Ministry of Justice and Legislative Assembly, both located in the Tel El-Hawwa government complex. Hamas Government sites serve as a critical component of the terrorist groups' infrastructure in Gaza.[237]

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been sentenced to death." See Human Rights Watch, Under Cover of War: Hamas Political Violence in Gaza (April 2009), p. 11.

[235] "Ending the war…", footnote 62.

[236] See also chapter XVI.

[237] http://dover.idf.il/IDF/English/opcast/op/press/0101.htm.

373. The Israeli army spokesperson further elaborated: "The attack on strategic government objectives, which constitute part of Hamas's mechanism of control, is a direct response to the continued firing on communities in southern Israel by the Hamas terrorist organization."[238]

3. The position of the Government of Israel

374. The Mission observes that the Government of Israel is not alleging that any Hamas military activity, such as launching of rockets, storage of weapons or planning of operations, was carried out in the Legislative Council building, the Ministry of Justice or the main prison. The justification of the Government of Israel for the strike on the Palestinian Legislative Council is that it is a "Hamas Government site", and that such sites "serve as a critical component of the terrorist groups' infrastructure in Gaza" and "constitute part of Hamas's mechanism of control".

375. This explanation posted on the Israeli armed forces' official website is integrated and elaborated on by numerous statements made by current and former senior Government officials to the media. Major Avital Leibovich, a spokesperson of the Israeli armed forces, reportedly argued "anything affiliated with Hamas is a legitimate target."[239] The deputy chief of staff, Maj. Gen. Dan Harel, reportedly told a meeting with heads of local authorities in southern Israel that:

> This operation is different from previous ones. We have set a high goal which we are aiming for. We are hitting not only terrorists and launchers, but also the whole Hamas government and all its wings. […] We are hitting government buildings, production factories, security wings and more. We are demanding governmental responsibility from Hamas and are not making distinctions between the various wings. After this operation there will not be one Hamas building left standing in Gaza, and we plan to change the rules of the game.[240]

376. Israeli armed forces' spokesman Captain Benjamin Rutland reportedly stated: "Our definition is that anyone who is involved with terrorism within Hamas is a valid target. This ranges from the strictly military institutions and includes the political institutions that provide the logistical funding and human resources for the terrorist arm."[241]

377. Mr. Matti Steinberg, a former senior adviser to the Israeli General Security Services, argued that "Hamas's civilian infrastructure is a very, very sensitive target. If you want to put pressure on them, this is how".[242] Less than three months before the hostilities in Gaza began, Col. Gabriel Siboni similarly argued that:

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[238] Official statement by an Israeli military spokesman, 1 January 2009, available at: http://dover.idf.il/IDF/News_Channels/art_mivzaim/09/01/0101.htm (in Hebrew).

[239] *The Washington Post*, "All-out war declared on Hamas", 30 December 2008.

[240] *Ynet*, "Deputy chief of staff: worst still ahead", 29 December 2008.

[241] BBC News, "Gaza conflict: who is a civilian?", 5 January 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/7811386.stm.

[242] "All-out war…".

> … the IDF will be required to strike hard at Hamas and to refrain from the cat and mouse games of searching for Qassam rocket launchers. The IDF should not be expected to stop the rocket and missile fire against the Israeli home front through attacks on the launchers themselves, but by means of imposing a ceasefire on the enemy.[243]

378. The Mission understands all these statements to imply that, in the view of their authors, in order to be effective, military operations have to be directed not only against military targets but also against the non-military infrastructure.

379. The Israeli Government's discussion of the "targeting of Hamas terrorist infrastructure" asserts that, "consistent with the principle of distinction, IDF forces attacked military targets directly connected to Hamas and other terrorist organizations' military activities against Israel." This statement is followed by a list of examples of objectives, such as command posts of al-Qassam Brigades, alleged weapons storage sites and training camps, rocket and mortar launch sites, and tunnels. The list also refers twice to a location identified as the office of Ismail Haniyah, "head of the Hamas administration". This list is followed, however, by a statement reiterating and elaborating the argument that there is really no distinction to be made between military and civilian objectives as far as government and public administration in Gaza are concerned:

> While Hamas operates ministries and is in charge of a variety of administrative and traditionally governmental functions in the Gaza Strip, it still remains a terrorist organization. Many of the ostensibly civilian elements of its regime are in reality active components of its terrorist and military efforts. Indeed, Hamas does not separate its civilian and military activities in the manner in which a legitimate government might. Instead, Hamas uses apparatuses under its control, including quasi-governmental institutions, to promote its terrorist activity.[244]

4. Factual findings

380. From the facts gathered by it, the Mission finds that Israel launched direct attacks against the main prison in Gaza City on 28 December 2008 and against the Palestinian Legislative Council building in Gaza City on 31 December 2008. The attacks substantially damaged the buildings, making them unfit for use. At least one person was killed in the attack on the prison, while there were apparently no casualties in the attack on the Legislative Council building.

381. The factual question of whether these two institutions and their buildings served a military purpose must be considered with regard to the legal definition of military objectives. It is addressed in the following section.

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[243] Gabriel Siboni, "Disproportionate force: Israel's concept of response in light of the second Lebanon war", *Institute for National Security Studies Insight*, No. 74 (2 October 2008), available at: http://www.inss.org.il/publications.php?cat=21&incat=&read=2222.

[244] "The operation in Gaza…", paras. 233-235.

5. Legal analysis

382. In assessing the Israeli strikes against the Legislative Council building and the main prison, the Mission first of all notes that Hamas is an organization with distinct political, military and social welfare components.[245]

383. Since July 2007 Hamas has been the de facto government authority in Gaza. As recognized by the Israeli Government,[246] the Hamas-led authorities in Gaza have been responsible for the civilian administration of Gaza. For instance, they employ civil servants and workers, run schools, hospitals, traffic police and the administration of justice. The fact that these institutions and the buildings housing them have been administered by authorities led by Hamas since July 2007, and no longer by a government composed of both Hamas and Fatah members has, in the view of the Mission, no bearing on the continued civilian character of these institutions. Regarding the prison, the Mission finds the consequences of the attack aptly described in the answer to its questions received from the Gaza authorities: "As a result of this targeting, great numbers of those who were detained pending trial in criminal cases and of those convicted of major crimes such as murder escaped. This has caused disorder and chaos, encouraged 'family revenge' cases and people taking the law into their own hands."[247] As far as the Palestinian Legislative Council building is concerned, it served representatives from all Palestinian parties who won seats in the 2006 elections (which were recognized as free and fair by international observers).

384. The Mission met with Gaza-based Legislative Council members belonging to Hamas, to Fatah and to the Popular Front for the Liberation of Palestine.[248] While Hamas constitutes the de facto authority in Gaza, the buildings attacked and destroyed served a public purpose that cannot be regarded as "promoting Hamas terrorist activity".

385. The fundamental rule of international humanitarian law applicable to attacks against buildings and infrastructure is enshrined in article 52 of Additional Protocol I ("General Protection of civilian objects"). This provision is generally recognized as codifying customary law applicable to both international and non-international armed conflicts:[249]

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[245] This situation is recognized also by Governments which have listed Hamas' military component as "terrorist". The Australian Government's listing of al-Qassam Brigades as a terrorist organization (last updated 14 September 2007), for instance, explains: "The functions of the Hamas organization, which has distinct civilian and military wings, include legitimate political and social activities. Its welfare and mosque networks act as a base for its recruitment and propaganda activities. Its terrorist operations are conducted by its military wing, the Izz ad-Din al-Qassam Brigades."

[246] "The operation in Gaza…", para. 235.

[247] Reply from the Gaza authorities to the Mission's list of questions (July 2009).

[248] The Mission also spoke with West Bank-based Legislative Council members.

[249] International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, vol. I, Jean-Marie Henckaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2005), rules of customary law 7–9. The Israeli Government recognizes this principle. See "The operation in Gaza…", para. 95.

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

386. The statement by the Israeli Government concerning the attack on the Legislative Council building and the Ministry of Justice does not suggest any "effective contribution to military action" that the buildings might have been making. No reference is made to any "definite military advantage" that their destruction would offer. Instead, the explanation is that government buildings constitute "part of Hamas's mechanism of control", that they "serve as a critical component of the terrorist groups' infrastructure in Gaza" and that "ostensibly civilian elements of [the Hamas] regime are in reality active components of its terrorist and military efforts."

387. The Mission observes that there is nothing unique in the fact that in Gaza ministries and prisons are part of the government's "mechanism of control" and that the legislature's assembly hall and administrative buildings are a critical component of the government infrastructure. That is not, however, the test applied by international humanitarian law and accepted State practice to distinguish between civilian and military objects. The Mission reviewed, for instance, the tentative list of military objectives drawn up by Major General A.P.V. Rogers, a former Director of the British Army Legal Services, and a proposed list of military objectives drawn up by the International Committee of the Red Cross (ICRC). There is nothing in this comprehensive list of military objectives that comes close to a legislative assembly's building or a prison. As far as ministries are concerned, both lists limit the definition of military objective to "war ministries".[250]

388. The Mission further notes that international humanitarian law also recognizes a category of civilian objects which may nonetheless be targeted in the course of armed conflict to the extent that they have a "dual use". Examples often made for such dual-use objects, which serve both civilian and military purposes, are civilian infrastructures such as telecommunications, power-generating stations or bridges, *in so far as they are used by the military in addition to their civilian use.* There is no indication, nor any allegation of any such dual use of the Legislative Council building or of the Gaza main prison.

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[250] "Final report to the Prosecutor by the Committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia", paras. 38–39, available at: http://www.un.org/icty/pressreal/nato061300.htm#IVA64d.

389. There is an absence of evidence or, indeed, any allegation from the Israeli Government and armed forces that the Legislative Council building, the Ministry of Justice or the Gaza main prison "made an effective contribution to military action." On the information available to it, the Mission finds that the attacks on these buildings constituted deliberate attacks on civilian objects in violation of the rule of customary international humanitarian law whereby attacks must be strictly limited to military objectives.

390. In the Mission's view these facts further indicate the commission of the grave breach of extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as defined in article 147 of the Fourth Geneva Convention.

391. The Mission rejects the analysis of present and former senior Israeli officials that, because of the alleged nature of the Hamas government in Gaza, the distinction between civilian and military parts of the government infrastructure is no longer relevant in relation to Israel's conflict with Hamas. This analysis is accompanied, in the statements of Col. Gabriel Siboni and Mr. Matti Steinberg, by an explicit argument that Israel should "put pressure" on Hamas by targeting civilian infrastructure to attain its war aims.

392. The Mission is of the view that this is a dangerous argument that should be vigorously rejected as incompatible with the cardinal principle of distinction. International humanitarian law prohibits attacks against targets that do not make an effective contribution to military action. Attacks that are not directed against military (or dual use) objectives are violations of the laws of war, no matter how promising the attacker considers them from a strategic or political point of view. As a recent academic contribution to the discussion on whether "new wars" require "new laws" has noted, "if this argument [that attacks against political, financial or psychological targets may prove more effective than those against military or dual-use objectives] was decisive, in some societies – in particular in democracies – it may be hospital maternity wards, kindergartens, religious shrines, or homes for the elderly whose destruction would most affect the willingness of the military or of the government to continue the war."[251]

B. Deliberate attacks on the Gaza police

393. Information received by the Mission indicates that 248 members of the Gaza police were killed in the course of Israel's military operations.[252] In other words, more than one out of every six casualties was a member of the Gaza police.

394. The Mission visited the "Arafat City" police headquarters in Gaza City and five police stations: the Abbas police station (central Gaza City), three police stations in neighbourhoods in the east and south of Gaza City (Zeytoun, al-Shujaeiyah and al-Tuffah) and the Deir al-Balah investigative police station. The Mission interviewed the Director of Police, the police spokesman, station commanders at the stations visited and other persons knowledgeable about

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[251] Marco Sassoli, "Targeting: the scope and utility of the concept of "military objectives" for the protection of civilians in contemporary armed conflicts", *New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts*, D. Wippman and M. Evangelista, eds. (Ardsley, New York; Transnational Publishers; 2005), p. 196.

[252] The Central Commission for Documentation and Pursuit of Israeli War Criminals (TAWTHEQ), established by the Gaza authorities' Ministry of Justice.

the Gaza police. The Mission also reviewed allegations about the Gaza internal security forces made by the Israeli Government and also mentioned in a report (in Hebrew) by the Orient Research Group Ltd., an Israeli organization commissioned by the then Israeli Prime Minister Ehud Olmert to produce this report.[253]

395. The attacks investigated by the Mission were all directed against facilities used by the police force called *shurta* (police) in official documents of the Gaza authorities and referred to as "civil police" in many English reports.

396. The Arafat City police headquarters and three of the five police stations visited were attacked during the first minutes of the Israeli military operations in Gaza, between 11.20 and 11.35 a.m. on 27 December 2009. According to witnesses, the attacks were carried out primarily with bombs and missiles launched from fighter jets. Missiles launched by naval forces might also have been used.

397. According to the information received by the Mission from TAWTHEQ, 29 other police stations were targeted by the Israeli armed forces in addition to the five police stations visited by the Mission. Twenty-four were targeted on 27 December 2008 (mostly during the first minutes of the attack), the first day of the military operations, nine on the following day and one on 14 January 2009.

1. Information regarding the attacks on the police headquarters and police stations visited by the Mission

398. Arafat City police headquarters occupy a large compound in central Gaza. They are used by the civil police (*shurta*), one of the police forces operating in Gaza, as office space and for training courses. The Mission visited three sites in the compound in which missiles or bombs had struck. In one large yard, three missiles struck the participants of a police training course. Forty-eight policemen were killed on the spot, five more were wounded, two of whom subsequently succumbed to their injuries.

399. While it appears that all the policemen killed in this location were taking part in a training course, there is conflicting information on the details. Most reports by NGOs are to the effect that these were police "cadets" in the midst of a graduation ceremony. The Gaza police spokesperson, however, told the Mission that they were serving policemen, who had been taking a three-week course and who were, at the time of the strike, doing "morning sport exercise".[254] The contents of the training course reportedly were "protocol", i.e. how to deal with

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[253] See Lt. Col. (res.) Jonathan Dahoah-Halevi, "Fatal casualties of the Palestinian security forces – Myth vs. Reality" (Orient Research Group Ltd., 2009). Its author is a former adviser to the Policy Planning Division of the Israel Ministry of Foreign Affairs and current researcher at the Jerusalem Center for Public Affairs and co-founder of the Orient Research Group Ltd. In a letter to the Mission, the author stated that the report had been commissioned "to identify the police officers killed and the extent of their affiliation with Hamas, Palestinian Islamic Jihad and other terrorist organizations." As to the sources and methodology employed, he explained that he had examined materials in the public domain, including official lists of policemen who were killed published by the Palestinian Police and the Gaza authorities, NGO reports and material published by Palestinian armed groups. "The operation in Gaza…" relies on this report, referring to it as "a recent study" (para. 247).

[254] Mission phone interview with Mr. Shahwan, Gaza police spokesperson, 12 July 2009.

representatives of foreign Governments and international delegations, and rescue operations. An obituary of one of the policemen killed, published on the website of al-Qassam Brigades, claims that he was attending "a military refreshing course."[255]

400. The police gave the Mission small cube-shaped (4x4x4 mm^3 and 2x4x4 mm^3) metal fragments allegedly from the missiles fired at this location. Information provided by NGOs that visited the site soon after the strike and collected samples of the munitions fragments confirm that they were found there. Laboratory analysis of the cubes establishes that they are made of tungsten.[256]

401. In a second location at Arafat City police headquarters, two projectiles fired by Israeli fighter jets left two craters. No one was present in the area at the time of the strike. The third location visited by the Mission was near the north gate of the police headquarters where a projectile, most likely a missile, killed police chief Tawfiq Jabr. Reports indicate that other sites at the police headquarters, not visited by the Mission, were also targeted.

402. A second police training course targeted was reportedly attended by around 50 policemen. Twenty-eight of them were killed in the strike. According to the police spokesperson, the training course was designed to instruct police officers on how to deal with police officers who abused their power as well as on cultural and economic issues relevant to police work.[257] Moreover, as the survivors were trying to flee through the western gate of the police city, they were reportedly targeted by two anti-personnel missiles, which caused deaths and injuries. While the Mission did not receive official information from the Gaza authorities on the number of policemen killed at the police headquarters on 27 December 2008, a report by an NGO submitted to the Mission states that 89 policemen died as a result of this attack.

403. Abbas police station in central Gaza City was, according to the station commander, hit by three missiles on 27 December 2008 at 11.35 a.m.[258] Officials at the police station had just been informed of the attack on Arafat City police a few minutes earlier and immediate evacuation of the station had begun. Nine policemen were killed, 20 more reportedly injured. There were, according to the station commander, five detainees (common criminal suspects) in the police cells, who were released before the attack. There were members of the public going about their normal business at the police station at the time of the strike, including women and children. TAWTHEQ estimates the material damage caused by the attack at US$ 80,000.

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[255] See http://www.alqassam.ps/arabic/sohdaa5.php?id=1342.

[256] Laboratory analysis was carried out under the supervision of Lt. Col. Lane of Ireland's Defence Forces, an expert witness of the Mission. In his report to the Mission he notes that "the IDF have deployed newly developed high-precision low-collateral damage missile systems…. In mid-2004 Rafael noted that a new warhead for the Spike had been developed for operations in urban areas." See also Human Rights Watch, Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles (June 2009), where it is stated that the fragments are likely to have been from drone-launched "Spike" missiles produced by the Israeli firm Rafael Advanced Defense Systems (pp. 6-7, 11-12).

[257] Mission phone interview with Mr. Shahwan, Gaza Police Spokesperson, 12 July 2009.

[258] Interview with station commander, Maj. Iyad Jabr el Horani, 9 June 2009.

404. The police station in the al-Tuffah neighbourhood of Gaza City, a recently completed three-storey building, was struck by three missiles around 11.30 a.m. on 27 December 2009.[259] Also according to the station commander, no policemen were killed, as it had been possible to evacuate the police station very rapidly after another target in the neighbourhood had been hit. Many civilian bystanders were, however, allegedly injured. The station was hit again in the course of the hostilities. TAWTHEQ estimates the material damage caused by the attack at US$ 150,000.

405. The Deir al-Balah investigative police station was attacked between 11.30 and 11.45 a.m. on 27 December 2008. According to a police officer interviewed by the Mission,[260] the police station was hit by a missile fired from an F-16. Other witnesses interviewed by the Mission recalled several explosions, the first of them most likely on a plot adjacent to the police station. Police officers who were inside the station at the time of the attack[261] reported that routine police activities were taking place. Suspects were being interrogated (there were four or five persons held in the station's jail) and residents of the area were filing complaints. One police officer, Ashraf Hamadah Abu Kuwaik, was killed in the strike, and five other officers and one civilian were also injured.

406. The attack on the Deir al-Balah investigative police station cost the lives of six members of the public, who were in the vicinity. As a result of the explosions at the police station and of the debris, walls at the house of the al-Burdini family next to the police station collapsed, killing the 10-year-old Kamelia al-Burdini[262] and injuring several other members of the family. At a wholesale fruit and vegetable market next to the police station on Salah ad-Din Street, where between 50 and 100 persons were trading at the time, debris from the police station killed five persons, among them Abd al-Hakim Rajab Muhammad Mansi, 32, and his son, Uday Hakim Mansi, and injured many others.[263]

407. The strikes on al-Shujaeiyah and Zeytoun police stations, on 28 December 2008 and 14 January 2009, did not result in the deaths of any policemen, as after the 27 December attacks the police stations had been evacuated.[264] In the attack on al-Shujaeiyah police station, however, two women, a man and a child, standing on the opposite side of the road, were reportedly killed by debris. TAWTHEQ estimates the material damage caused by the attacks on al-Shujaeiyah and Zeytoun police stations at US$ 210,000 and US$ 900,000, respectively.

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[259] Interview with Tuffah station commander, Maj. Aymal el-Batniji, 9 June 2009.

[260] Interview with First Lieutenant Samih Sabbah, 30 June 2009.

[261] Interviews with First Lieutenant Samih Sabbah and criminal investigation officer Ahmad Abu Slimya, 30 June 2009.

[262] Interview with Refaet al-Burdini, 30 June 2009.

[263] Interview with Muhammad Ibrahim Khalid. The names of two of the persons killed are on the PCHR list of child victims of the hostilities.

[264] Interviews with Zeytoun station commander, Maj. Mahmoud Kehael, and Lt. Mahmoud Idallo of al-Shujaeiyah station.

2. Conflicting characterizations of the Gaza security forces

(a) The approach of the Government of Israel

408. The position of the Government of Israel is that "due to their military functions, these internal security forces were not accorded the immunity from attack generally granted to civilians." It alleges that, in May 2006, Hamas formed the Executive Force as a loyal militia, "[drawing] this paramilitary force largely from its military wing, the Izz al-Din al-Qassam Brigades, and armed the members with anti-tank missiles, mortars, machine guns and grenades. The newly recruited commanders and subordinates were not obliged to give up their military wing affiliation, and continued to operate simultaneously in both functions." It further alleges that after the June 2007 seizure of full control over Gaza, Hamas restructured the Executive Force and subdivided it into several units, including the police, who "assumed many traditional law enforcement functions". It goes on to say that its members, however, remained members of Hamas' military wing and their weaponry continued to include machine guns and anti-tank weapons. "[…] the former Executive Force continued to be closely integrated with — although not formally part of — the al-Qassam Brigades. […] many members of the internal security services also served directly in the al-Qassam Brigades." Regarding the military operations, the Israeli Government alleges that "Hamas intended to, and did, in fact, employ its internal security forces for military activities during the Gaza Operation." It further alleges that the "collective role of the Gaza 'police' as an integral part of Hamas armed forces is further evidenced by the fact that many Gaza 'policemen' were also members of the al-Qassam Brigades." To support this allegation, an Israeli Government paper shows pictures of four men killed during the military operations. Each of the men is shown in two pictures purportedly downloaded from Palestinian websites, one identifying the man as a policeman, the other as a member of al-Qassam Brigades. Finally, the paper refers to the above-mentioned study of the Orient Research Group Ltd., stating that it found that "more than nine out of every ten alleged 'civilian police' were found to be armed terrorist activists and combatants directly engaged in hostilities against Israel."[265]

(b) The approach of the Gaza authorities

409. The characterization of the Gaza internal security forces by the Government of Israel differs sharply from the tasks of the police as they are described on the official website of the Gaza Ministry of Interior, in orders to the police issued by the Minister of Interior which the Mission has reviewed, and in the interviews with the Director of Police and the police spokesman conducted by the Mission.

410. The Director of Police, Gen. Jamal al-Jarrah, also known as Abu Obeidah, stated that "the role of the police is to solve problems of the population, combat drug trafficking, arrest criminals." He reported that they are equipped with Kalashnikov firearms and batons, as the authorities have not been able to obtain other police equipment, such as tear gas and small guns. Gen. Abu Obeidah acknowledged that there were complaints about the "harsh" methods of the

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[265] "The operation in Gaza…", paras. 237, 239, 241-242 and 245-247.

Gaza police, but showed pride in their success in reducing lawlessness in the Gaza Strip.[266] This assessment was shared by many whom the Mission interviewed in the course of its investigations. The police orders and the Ministry's website similarly describe the police as a law-enforcement agency. As to allegations that the police and al-Qassam Brigades were "interchangeable", the Director of Police asserted that they were "absolutely not true".

411. According to the police spokesperson, during the military operations the mandate of the police was firstly to "protect the internal front", i.e. ensure that the relationship between the civilian population and the authorities stayed "intact". Secondly, the police were to monitor the distribution of humanitarian goods to the civilian population. Thirdly, they were to continue regular law-enforcement duties, with a particular focus on combating looting and speculation on prices.[267]

3. The Mission's assessment of the role and composition of the police

412. In order to shed some light on where the truth might lie between these two conflicting descriptions of the police, the Mission finds it necessary to examine the development of the security forces linked to Hamas after its election victory in January 2006. When Mr. Said Seyam, a senior Hamas representative,[268] took office as the Palestinian Authority's Minister of Interior in April 2006, he found that he had little or no control over the Palestinian Authority's security forces, which were put under the control of the President of the Palestinian Authority and of officials loyal to him.[269] On 20 April 2006, he announced the formation of a new security force reporting directly to him. This was the Security Forces Support Unit, also known as the Executive Force (*al-Quwwa al-Tanfiziyya*). The new security force appears to have had a double function as both a law-enforcement agency and, at least potentially, a military force. It was officially charged with enforcing public security and protecting property. At the same time, he appointed Mr. Jamal Abu Samhadana, commander of the Popular Resistance Committees, as the head of the Executive Force[270] and announced that it would be composed of 3,000 new recruits

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[266] Mission meeting with the Gaza authorities' Director of Police, 4 June 2009. On both successes in restoring order and violations of human rights by the Gaza police after June 2007, see also International Crisis Group, "Ruling Palestine I: Gaza under Hamas", Middle East Report No. 73, 19 March 2008, p. 10.

[267] Mission meeting with Gaza authorities' police spokesperson, 9 June 2009. According to the International Crisis Group, during the hostilities, "the Qassam Brigades and some civil police members (still referred to locally as the "Executive Forces") patrolled streets in civilian clothes; some wore badges to establish their official status. They continued to arrest lawbreakers, detaining them in ordinary apartments since prisons have been destroyed; this helps explain why thus far there has been no report of looting or increase in crime. Likewise, security personnel maintained order in breadlines that sometimes stretched to hundreds of people and prevented unrest at the overburdened hospitals, where tempers easily flare." "Ending the war…", p. 8).

[268] Said Seyam was killed by an Israeli air strike on 15 January 2009 together with several members of his family (TAWTHEQ documents submitted to the Mission; see also International Crisis Group, "Gaza's unfinished business", Middle East Report N°85, 23 April 2009, p. 5.)

[269] See, for instance, International Crisis Group, "Palestinians, Israel, and the Quartet: Pulling back from the brink", Middle East Report N°54, 13 June 2006, p. 12.

[270] Ibid., pp. 13 and 20; "Fatal casualties…". Abu Samhadana and three other members of the Popular Resistance Committees were killed by an Israeli air strike on 8 or 9 June 2006.

from various Palestinian armed groups, including al-Qassam Brigades.[271] The newly appointed commander reportedly declared: "[The Executive Force] will be the nucleus of the future Palestinian army. The resistance must continue. We have only one enemy. … I will continue to carry the rifle and pull the trigger whenever required to defend my people. We are also a force against corruption. We are against thieves, corrupt officials and law breakers." [272]

413. In August 2007, following the June 2007 Hamas seizure of full control over Gaza, the current Director of the Gaza authorities' civil police, then head of the Executive Force, Gen. Abu Obeidah, described the planned reorganization of the security services in Gaza. Executive Force members were to be integrated into the civil police. He reportedly stated that Hamas was "working hard to retrain Executive Force members to perform police duties" and that the "Force will be in charge of chasing drug dealers and lawless residents". At the same time, he stated that "members of the Force are religious, and are resistance fighters."[273]

414. In October 2007, the security services operating in Gaza were reorganized. The previous Palestinian Authority's police agencies in Gaza were merged with the Executive Force.[274] The security forces under the control of the Ministry of Interior emerging from this reorganization comprise the Civil Police, the Civil Defence, the Internal Security (an intelligence agency) and the National Security. Their mandates, according to the Gaza authorities' Ministry of Interior's website,[275] are differentiated.

415. The National Security force is given specific military tasks, such as "the protection of the State from any foreign aggression" and "responsibility for the defence of the Palestinian homeland in the face of external and internal threats". It is thus plainly a military force whose members are, under international humanitarian law, combatants.[276] The functions of the police have been outlined above.

416. On 1 January 2009, during the Israeli military operations in Gaza, the police spokesperson, Mr. Islam Shahwan, informed the media that the police commanders had managed to hold three meetings at secret locations since the beginning of the armed operations. He added that "an action plan has been put forward, and we have conducted an assessment of the situation

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[271] "Palestinians, Israel, and the Quartet…", p. 13. The "Executive Force consisted in summer of 2007 of some estimated 6,800 members of the armed wings of Hamas and the Popular Resistance Committees", R. Friedrich and A. Luethold, eds., Entry-Points to Palestinian Security Sector Reform (Geneva Centre for the Democratic Control of Armed Forces, 2007), p. 162.

[272] "Palestinians, Israel, and the Quartet…", footnote 105.

[273] International Middle East Media Center, "Interview with the leader of the Hamas-formed Executive Force", 17 August 2007, available at: http://www.imemc.org/article/49939.

[274] See, e.g., Xinhua, "Hamas Executive Force merged into police force in Gaza: official", 2 October: "Ihab al-Ghusein, a spokesman with the Interior Ministry, made the remarks during a news conference in Gaza. Al-Ghusein said the mission of the Executive Force 'is now over, and it is time to include the force into the official police force that belongs to the ministry of interior.'"

[275] See the Arabic-language website of the Gaza Ministry of Interior: http://www.moi.gov.ps/?page=633734043174687500.

[276] See the Arabic-language website of the National Security Forces: http://www.nsf.gov.ps.

and a general alert has been declared by the police and among the security forces in case of any emergency or a ground invasion. Police officers received clear orders from the leadership to face ("يواجه_" in Arabic) the enemy, if the Gaza Strip were to be invaded."[277] Confirming to the Mission that he had been correctly quoted, Mr. Shahwan stated that the instructions given at that meeting were to the effect that in the event of a ground invasion, and particularly if the Israeli armed forces were to enter urban settlements in Gaza, the police was to continue its work of ensuring that basic food stuffs reached the population, of directing the population to safe places, and of upholding public order in the face of the invasion. Mr. Shahwan further stated that not a single policeman had been killed in combat during the armed operations, proving that the instructions had been strictly obeyed by the policemen.

417. The Mission notes that there are no allegations that the police as an organized force took part in combat during the armed operations. On the basis of the information provided by the Gaza authorities and of the above-mentioned study of the Orient Research Group Ltd., it would appear that 75 per cent of its members killed in the course of the military operations died as a result of the air strikes carried out during the first minutes of the Israeli attack. These men had not engaged in combat with the Israeli armed forces.[278]

418. The Mission also notes that while the then commander of the Executive Forces and now Director of Police did reportedly say in August 2007 that members of the Executive Force were "resistance fighters", he stressed in the same interview the authorities' intention to develop it into a law enforcement force. The Mission notes that a situation in which a recently constituted civilian police force integrates former members of armed groups would not be unique to Gaza. That prior membership in itself would not be sufficient to establish that the police in Gaza is a part of al-Qassam Brigades or other armed groups.

419. Except for the statements of the police spokesperson, the Israel Government has presented no other basis on which a presumption can be made against the overall civilian nature of the police in Gaza. It is true that the police and the security forces created by Hamas in Gaza may have their origins in the Executive Force. However, while the Mission would not rule out the possibility that there might be individuals in the police force who retain their links to the armed groups, it believes that the assertion on the part of the Government of Israel that "an overwhelming majority of the police forces were also members of the Hamas military wing or

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[277] His statements are reported in the Arabic original on a website of the Egyptian Muslim Brotherhood, at http://www.ikhwanonline.com/Article.asp?ArtID=43756&SecID=450. The journalist states that in spite of the Israeli air attacks against police stations, the police continued to do law enforcement work and to direct the traffic: "members of the Criminal Investigation and the Internal Security caught a quantity of drugs in some of the targeted areas, and at the entrances of some of the crossroads and cities within the Strip, where one can observes members of the police in civilian clothes monitoring the traffic".

[278] In "Fatal casualties…", the Orient Research Group Ltd, however, identifies 31 policemen who it alleges were killed in combat in Gaza during the period from 3 to 18 January. In a few cases the information is rather specific, such as "killed on 4 January in Jabalya after launching rockets" or "killed on 6 January while fighting the IDF in Deir al-Balah". In other cases it is more generic, such as "killed while fighting the IDF". The Mission accepts that this might indicate that some individual members of the Gaza police were at the same time members of armed groups. The Mission is also mindful, as explained below, that the claims of armed groups that a person killed during the armed operations was one of their members have to be treated with care.

activists of Hamas or other terrorist organizations",[279] appears to be an overstatement that has led to prejudicial presumptions against the nature of the police force that may not be justified.

420. In his meeting with the Mission, the Director of Police was very open in acknowledging that many of his men were Hamas supporters, but insisted at the same time there are others who supported other Palestinian factions.[280] Police station commanders interviewed by the Mission stated that most of their men (70 per cent according to the estimates of one station commander, 95 per cent in another station) had joined the police after June 2007.[281] The Mission understands that most, if not all, of the post-June 2007 recruits into the civil police, will have been recruited from the Executive Force, which was strongly loyal to Hamas.

421. The Mission also notes, however, that in senior positions in the police, the representation of non-Hamas men appears to have been broader. The Director of Police killed on 27 December 2008, Mr. Tawfiq Jabr, was generally known as not being affiliated with Hamas. Several of the station commanders interviewed by the Mission were also not Hamas affiliates but men who had joined the Palestinian Authority's police after the Oslo Accords allowed the Palestinians to constitute their own law-enforcement agencies. They had thus served in the Palestinian police in Gaza for more than 10 years before Hamas seized control of it in June 2007.

422. The Mission further notes that the study conducted by the Orient Research Group Ltd. names policemen killed during the attack, whom it identifies as members of Hamas, al-Qassam Brigades, other armed Palestinian groups or "terror operatives" whose affiliation is not known. In 78 out of 178 cases the policemen are alleged to be members of al-Qassam Brigades on the sole basis that they were allegedly Hamas members.

423. Furthermore, it appears from the response to the Mission from the Orient Research Group Ltd. describing its methodology that its information on police members' alleged affiliation with armed groups was based to a large extent on the websites of the armed groups. In this respect, the Mission is mindful of a recent report by a Palestinian human rights NGO drawing attention to the "issue of the 'adoption' of killed persons by resistance groups; i.e. declaration by a political or armed group that the person killed was one of their members. Often, when persons, including children, are killed by actions of the Israeli armed forces , political and/or armed groups 'adopt' them as 'martyrs' placing their photographs on their websites and commending their contribution to resisting occupation. This does not mean that those persons killed were involved in resistance activities in any way. The families accept this 'adoption' of deceased family members for various reasons including the willingness of resistance groups to provide financial support to the families and pay for funeral costs of the persons killed." As the NGO concludes, "these cases require in-depth investigation on a case-by-case basis in order to determine every person's status according to his actual affiliation".[282]

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[279] "The operation in Gaza…", para. 247.

[280] Mission meeting with Director of Police, 4 June 2009.

[281] Mission interviews with Gaza City police station commanders, 9 June 2009.

[282] Al Mezan Center for Human Rights, "Cast lead offensive in numbers", p. 5.

4. Factual findings

424. From the facts gathered by it, the Mission estimates that 99 policemen and nine members of the public were killed in the attacks on the police headquarters and the five police stations inspected by the Mission. The Gaza authorities state that overall 248 policemen were killed by the Israeli armed forces during the military operations. The study by the Orient Research Group Ltd. identifies 345 men allegedly belonging to the Gaza internal security forces killed by Israeli attacks during the military operations. It identifies 240 of the 345 alleged members of the internal security forces as members of the police. This is very close to the number provided by the Gaza authorities.[283]

425. The facts gathered by the Mission indicate that the policemen were the intended targets of the attacks. The Israeli Government[284] is quite clear on this, and has not suggested that the attacks on the police were not intended. The type of ammunition used at the Arafat City police headquarters is designed to kill or incapacitate people in the area of impact and has little or no effect on buildings or other infrastructure. In other locations at the civil police headquarters in Gaza City the munitions used were such that the damage to infrastructure was minimal compared to the cost in lives among the policemen. With regard to the other police stations visited by the Mission, damage to the buildings was extensive but the number of policemen killed was limited, with the exception of Abbas police station in central Gaza City, where nine policemen were killed. There is no question that the approximately 100 policemen who died in the attacks on the stations visited by the Mission were deliberately targeted and killed by the Israeli armed forces.

426. The attacks on the police headquarters and five police stations visited by the Mission were carried out during the first minutes of the surprise air bombing campaign launched by the Israeli armed forces against Gaza shortly before 11.30 a.m. on 27 December.

427. From the facts gathered by it, the Mission finds that there is insufficient information to conclude that the Gaza police as a whole had been "incorporated" into the armed forces of the Gaza authorities. The statement by the police spokesperson on 1 January 2009 (after the attacks of 27 December 2008 had been carried out) cannot, on its own, justify the assertion that the police were part and parcel of the armed forces.

428. The Mission could not verify the allegations of membership of armed groups of policemen. In half the cases, moreover, the allegations appear to be based merely on an equation of membership in Hamas (in itself alleged on the basis of unverifiable information) with membership in al-Qassam Brigades, which in the view of the Mission is not justified. Finally, even according to the study referred to by the Israeli Government, 34 policemen without any affiliation to Hamas or a Palestinian armed group were killed in the armed operations, the great majority of them in the bombardment of police stations on the first day of the military operations.

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[283] "Fatal casualties…" assigns the remaining victims to national security (5), civil defence (11) and internal security (2), with the remaining 85 identified as belonging to security forces without being able to state which one.

[284] "The operation in Gaza…", pp. 89-95.

429. An "obituary" published on a website of al-Qassam Brigades states that one of the training courses at the police headquarters in Gaza on 27 December 2008 was a "military refresher course". That is, however, contradicted by the police spokesperson and a number of the reports received by the Mission from NGOs. It is also not suggested by the Israeli Government that that was a reason for attacking it. As a distinct probability, the Mission finds that the policemen killed there were neither engaged in any military activity at the time of the attacks nor carrying out preparations for combat. At the other police stations, the police were engaged in a range of routine tasks, including questioning detainees and handling issues for members of the public who were present in police facilities in the middle of an ordinary day.

5. Legal analysis

(a) The applicable rules of international humanitarian law

430. The general rule of international humanitarian law is that members of law-enforcement agencies are considered part of the civilian population, unless they have been incorporated into the armed forces of a party to the conflict.[285] This principle is accepted by the Israeli Government.[286] The obligation to distinguish at all times between the civilian population and combatants and to direct attacks only against military objectives[287] (the principle of distinction) therefore generally prohibits attacks against members of the law-enforcement agencies. In its Advisory Opinion of 8 July 1996 on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice recognized the principle of distinction as an "intransgressible" principle of customary international law.

431. There are three situations in which direct attacks against members of police forces would not constitute a violation of the principle of distinction. First, if the law-enforcement agency or the unit to which the policeman belongs has been "incorporated" into the armed forces, thus conferring combatant status upon its members. Second, if individual members of the law-enforcement agency are at the same time members of an armed group, they would be combatants.[288] Thirdly, individual members of the law-enforcement agency, like any civilians,

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[285] Article 43 (3) of Additional Protocol I provides: "Whenever a party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other parties to the conflict."

[286] "The operation in Gaza…" (para. 238) states that "whereas members of a civilian police force that is solely a civilian police force, who have no combat function are not considered combatants under the Law of Armed Conflict, international law recognizes that this principle does not apply where police are part of the armed forces of a party."

[287] Article 48 of Additional Protocol I expresses the principle in the following terms:

> In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

[288] The ICRC Commentary to Additional Protocol I argues that "any interpretation which would allow combatants as meant in article 43 to "demobilize" at will in order to return to their status as civilians and to take up their status as combatants once again, as the situation changes or as military operations may require, would have the effect of cancelling any progress that this article has achieved. … [Article 44] does not allow this combatant to have the status of a combatant while he is in action, and the status of a civilian at other times" (pp. 515-516).

may not be targeted "unless and for such time as they take a direct part in hostilities."[289] Finally, as with civilians generally, policemen might be indirectly injured or killed in an attack which is directed at a military objective, as long as the attack complies with the principle of proportionality.

(b) Conclusion

432. The Mission will now draw conclusions with regard to each of these grounds potentially justifying the attacks against the police.

433. First, as already noted above, the Mission finds that there is insufficient information to conclude that the Gaza police as a whole had been "incorporated" into the armed forces of the Gaza authorities. Accordingly, the policemen killed cannot be considered to have been combatants by virtue of their membership in the police.

434. Second, the Mission finds that the policemen killed on 27 December 2008 cannot be said to have been taking a direct part in hostilities. Thus, they did not lose their civilian immunity from direct attack as civilians on this ground.[290]

435. Third, the Mission examined whether the attacks on the police stations could be justified on the basis that there were, allegedly, members of Palestinian armed groups among the policemen. The question would thus be one of proportionality. The principle of proportionality is reflected in Additional Protocol I, which prohibits launching attacks "which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."[291]

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[289] Pursuant to article 51 (3) of Additional Protocol I, civilians enjoy immunity from attack "unless and for such time as they take a direct part in hostilities." According to ICRC, this rule also reflects customary international law: "Civilians are protected against attack unless and for such time as they take a direct part in hostilities" (rule 6). *Customary International Humanitarian Law*.... The Mission is aware that Israel is not a party to Additional Protocol I and reportedly does not accept the qualifying phrase "and for such time" as reflective of customary law (see Y. Dinstein, "The ICRC customary international humanitarian law study", *Israel Yearbook on Human Rights*, vol. 36 (2006), p. 11). In its report on the military operations, the Government of Israel refers to a definition of direct participation in hostilities by Israel's High Court of Justice as "involving all persons that perform the function of combatants, including "a civilian bearing arms (openly or concealed) who is on his way to the place where he will use them against the army, at such place, or on his way back from it," as well as "a person who collected intelligence on the army, whether on issues regarding the hostilities … or beyond those issues…; a person who transports unlawful combatants to or from the place where the hostilities are taking place; a person who operates weapons which unlawful combatants use, or supervises their operation, or provides service to them, be the distance from the battlefield as it may." ("The operation in Gaza…", para. 120).

The Mission is of the view that, for the purposes of the legal analysis of the attacks on the police stations considered here, it is not decisive whether the rule binding Israel is that "civilians are protected against attack unless and for such time as they take a direct part in hostilities" or only "unless they take direct part in hostilities".

[290] This finding does not apply to those policemen who were members of al-Qassam Brigades, who were therefore combatants and not civilians.

[291] Israel recognizes that "customary international law bars military attacks that are anticipated to harm civilians excessively in relation to the expected military advantage." "The operation in Gaza…", para. 120.

436. The Mission has earlier accepted that there may be individual members of the Gaza police that were at the same time members of al-Qassam Brigades or other Palestinian armed groups and thus combatants. Even if the Israeli armed forces had reliable information that some individual members of the police were also members of armed groups, this did not deprive the whole police force of its status as a civilian law-enforcement agency.[292]

437. From the facts available to it, the Mission finds that the deliberate killing of 99 members of the police at the police headquarters and three police stations[293] during the first minutes of the military operations, while they were engaged in civilian tasks inside civilian police facilities, constitutes an attack which failed to strike an acceptable balance between the direct military advantage anticipated (i.e. the killing of those policemen who may have been members of Palestinian armed groups) and the loss of civilian life (i.e. the other policemen killed and members of the public who would inevitably have been present or in the vicinity). The attacks on the Arafat City police headquarters and the Abbas Street police station, al-Tuffah police station and the Deir al-Balah investigative police station constituted disproportionate attacks in violation of customary international humanitarian law.

438. From the facts available to it, the Mission further believes that there has been a violation of the inherent right to life of those members of the police killed in the attacks of 27 December 2007 who were not members of armed groups by depriving them arbitrarily of their life in violation of article 6 of the International Covenant on Civil and Political Rights.

VIII. OBLIGATION ON PALESTINIAN ARMED GROUPS IN GAZA TO TAKE FEASIBLE PRECAUTIONS TO PROTECT THE CIVILIAN POPULATION

439. An assessment of the events occurring during the military operations in Gaza in December 2008 - January 2009 requires an investigation of the tactics used both by the Israeli armed forces and by the Palestinian armed groups in the context of their obligations under international humanitarian law to take constant care to minimize the risk of harm to the civilian population and to civilian objects. The Mission examines the extent to which the Israeli armed forces took all feasible precautions in chapter IX, as well as in the examination of individual incidents. In this chapter, the Mission examines allegations that the conduct of the Palestinian armed groups placed the civilian population of Gaza and civilian objects at risk of attack.

440. In its efforts to gather more direct information on the subject, during its investigations in Gaza and in interviews with victims and witnesses of incidents and other informed individuals, the Mission raised questions regarding the conduct of Palestinian armed groups during the hostilities in Gaza. The Mission notes that those interviewed in Gaza appeared reluctant to speak about the presence of or conduct of hostilities by the Palestinian armed groups. Whatever the

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[292] "The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character" (Additional Protocol I, art. 50 (3)).

[293] These are the policemen killed at the police headquarters and police stations visited by the Mission. The overall number of policemen killed on 27 December 2008 is around 180, according to the Orient Research Group Ltd. See "Fatal casualties…".

reasons for their reluctance, the Mission does not discount that the interviewees' reluctance may have stemmed from a fear of reprisals.[294]

441. The Mission also addressed questions regarding the tactics used by Palestinian armed groups to the Gaza authorities. They responded that they had nothing to do, directly or indirectly, with al-Qassam Brigades or other armed groups and had no knowledge of their tactics.[295] To gather first-hand information on the matter, the Mission requested a meeting with representatives of armed groups. However, the groups were not agreeable to such a meeting. The Mission, consequently, had little option but to rely upon indirect sources to a greater extent than for other parts of its investigation.

442. In forming an opinion on the subject, the Mission did use information it had gathered in the course of investigating certain incidents during the December-January military operations. However, the Mission mostly reviewed the allegations made in reports by the Government of Israel, by private individuals and organizations,[296] and by NGOs.[297]

443. The Mission focused on allegations that Palestinian fighters had launched attacks from within civilian areas and from protected sites (such as schools, mosques and medical units); used civilian and protected sites as bases for military activity; misused medical facilities and ambulances; stored weapons in mosques; failed to distinguish themselves from the civilian population and, in so doing, used the Gazan civilian population as a shield against Israeli attack. The Mission further sought information concerning allegations that Palestinian armed groups had booby-trapped civilian property.[298]

444. The significance of these allegations is twofold. First, the alleged conduct might constitute a violation by the Palestinian armed groups of their obligation of care to prevent harm to the civilian population or the prohibition against the deliberate use of civilians to shield from military activity. Second, the Government of Israel and others argue that certain attacks by Israeli armed forces on civilian objects or protected sites were justified by the unlawful use that Palestinian armed groups made of them. In the words of a report by the Israeli armed forces on its shelling of a United Nations compound in which at least 600 Palestinian civilians had taken refuge, such attacks were "the unfortunate result of the type of warfare that Hamas forced upon

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[294] See chap. XX.

[295] Response of the Gaza authorities to the Mission.

[296] Submissions to the Mission by the Jerusalem Center for Public Affairs, B'nai Brith International, Take A Pen, the National Lawyers Guild, Mr. Maurice Ostroff, Ms. Yvonne Green and Mr. Peter Wertheim on behalf of a group of Australian lawyers.

[297] For example, Amnesty International, *Israel/Gaza: Operation "Cast Lead": 22 days of death and destruction*, (London, 2009); International Crisis Group, "Gaza's unfinished business", Middle East Report, No. 85, 23 April 2009; Human Rights Watch, *Rockets from Gaza: Harm to Civilians from Palestinian Armed Groups' Rocket Attacks*, (August 2009).

[298] "The operation in Gaza…", pp. 55-76. The Mission understands the criticisms made by the Government of Israel to Hamas' tactics to apply also to other Palestinian armed groups.

the IDF, involving combat in the Gaza Strip's urban spaces and adjacent to facilities associated with international organizations."[299]

445. The Mission will address the justifications put forward by the Government of Israel for attacks on protected sites that it alleged were being used by Palestinian armed groups and that are investigated in this report.

A. Launching attacks from within civilian areas and from within or in the immediate vicinity of protected sites

446. The Mission investigated two incidents in which the Government of Israel alleged that Palestinian combatants had fired on the Israeli armed forces from within a United Nations protected site or its immediate vicinity in densely populated urban areas. In the case of the shelling in al-Fakhura Street by the Israeli armed forces on 6 January 2009 (chap. X), the Mission accepted, on the basis of information in the reports it had seen, the possibility of mortar attacks from Palestinian combatants in the vicinity of the school.

447. In the incident at the UNRWA compound in the neighbourhood of Rimal, in the centre of Gaza City, senior international UNRWA staff indicate that they were unaware of any sustained fire at the relevant time from anywhere in the nearby areas (chap. IX). In that case the Mission was unable to make a finding as to whether any combat activity was being conducted by Palestinian armed groups against the Israeli armed forces in that area at that time.

448. The Mission spoke with two witnesses who testified to the launching of rockets from urban areas. One witness stated seeing rockets being launched from a narrow street and from a square in Gaza City without providing further details as to when this occurred.[300] A second witness told the Mission that rockets may have been fired from within the Sheikh Radwan neighbourhood north of Gaza City during the military operations in Gaza.[301]

449. The Mission found corroboration of these witness accounts in a number of reports from international NGOs. In reports issued following Israel's military operations in Gaza, Amnesty International, the International Crisis Group and Human Rights Watch each determined that the rocket units of the Palestinian armed groups operated from within populated areas.[302] Human Rights Watch and the International Crisis Group gathered reports from civilians about instances in which armed groups had launched or had attempted to launch rockets near residential areas. Human Rights Watch quoted a resident of northern Gaza as stating that, on 1 January 2009, residents of the area prevented Palestinian fighters, who they believed were preparing to launch

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[299] http://dover.idf.il/IDF/English/opcast/postop/press/2202.htm. According to the Israeli Government, "when a party to an armed conflict uses civilian and protected spaces for military purposes, those spaces become legitimate targets for the opposing side, thereby placing civilian lives and infrastructure in great danger" ("The operation in Gaza…", para. 153).

[300] Mission interview with RA/01, June 2009.

[301] Mission interview with RA/02, June 2009.

[302] Israel/Gaza: Operation "Cast Lead": 22 days…, pp.74–75; "Gaza's unfinished business…", p. 3; Rockets from Gaza..., p. 21.

rockets, from entering a garden next to the building in which they lived.[303] The International Crisis Group interviewed a resident of Beit Lahia who stated that fighters used his land to fire rockets, which he did not dare to resist, as his father had previously been shot in the leg by a member of such an armed group when he had tried to prevent them from using his land as a rocket launching site.[304] Amnesty International conducted interviews with residents of Gaza who stated that they had observed Palestinian fighters firing a rocket from a courtyard of a Government school in Gaza City at a time when the schools were closed. In another area of Gaza City, another resident reportedly showed an Amnesty International researcher a place from which a rocket had been launched, 50 metres from a residential building.[305] Amnesty International also reported, however, that it had seen no evidence that rockets had been launched from residential houses or buildings while civilians were still in them.

450. Both the International Crisis Group and Human Rights Watch found that the practice of firing close to or within populated areas became more prevalent as the Israeli armed forces took control of the more open or outlying areas.[306]

451. The Mission reviewed the pictures allegedly showing the launching of rockets "from within or near residential buildings, including schools, mosques and hospitals" in the Israeli Government's paper[307] and in several of the submissions it received.[308] The Mission notes that it is not reasonably possible to determine whether those photographs show what is alleged. As the Israeli Government concedes,[309] many of them refer not to the December 2008-January 2009 period, but to previous alleged instances of firing of rockets from Gaza.[310]

452. In view of the information communicated to it and the material it was able to review, the Mission believes that there are indications that Palestinian armed groups launched rockets from urban areas. In those instances in which Palestinian armed groups did indeed fire rockets or mortars from urban areas the question remains whether this was done with the specific intent of shielding the combatants from counter-attack. The Mission has not been able to obtain any direct evidence on this question; nor do reports from other observers provide a clear answer.

453. According to the International Crisis Group, for instance, a fighter for Islamic Jihad stated in an interview that "the most important thing is achieving our military goals. We stay away from the houses if we can, but that's often impossible", which suggests the absence of intent. The same NGO also reports an interview with three Palestinian combatants in January 2009 in

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[303] Rockets from Gaza…, p. 22.

[304] "Gaza's unfinished business…", p. 3, footnote 29.

[305] Israel/Gaza: Operation "Cast Lead": 22 days…, p. 74.

[306] *Rockets from Gaza*…, p. 21; "Gaza's unfinished business…", p. 3.

[307] "The operation in Gaza…", para. 155.

[308] See, for instance, submission to the Mission by Mr. Maurice Ostroff.

[309] "The operation in Gaza…", para. 155.

[310] The following video, referred to in a submission to the Mission by B'nai B'rith International, appears to show the launching of rockets from within an urban area, allegedly from within a school, on 8 January 2009: http://www.youtube.com/watch?v=UN9WzUc7iB0

which the fighters reportedly stated that rockets and mortars were launched in close proximity to homes and alleyways "in the hope that nearby civilians would deter Israel from responding".[311]

454. The Mission now turns to the related but distinct question of whether and to what extent Palestinian armed groups made use of residential housing and of protected sites, such as schools, hospitals, mosques and United Nations facilities, in their engagements with Israeli ground forces.

455. The Mission also examined the question of the presence and activities of members of Palestinian armed groups in chapter XI. As already mentioned, Palestinian witnesses were generally reluctant to speak to the Mission about the activity of Palestinian armed groups in their neighbourhoods. For the present purposes, it suffices to say that, in some of the cases, there was evidence of the presence of Palestinian armed groups in residential areas.[312]

456. The Mission received a submission from a colonel of the reserve of the Israeli armed forces that seeks to illuminate the "combat principles" of Palestinian armed groups. His report is based on material published by Palestinian armed groups on their websites. The report describes alleged tactics such as "seizing houses as military positions for the purpose of staging ambushes against IDF forces" and "deploying explosive charges of various types (IEDs, penetrating, bounding, anti personnel etc.) in the vicinity of residences and detonating them", "booby-trapping houses … and detonating the charges", and "conducting fighting and sniper fire at IDF forces operating in the built-up areas".[313]

457. This submission provides useful information. It tends to show, for instance, that ground engagements between Israeli forces and Palestinian armed groups were most intense in areas of mixed urban-rural character on the outskirts of Gaza City, Jabaliyah and Beit Lahia.

458. The Mission notes, however, that the one incident described in the submission which it has investigated itself illustrates the unreliability of some of the sources the report relies on. In this incident, the source claimed that three Palestinian combatants had laid an ambush in a house in Izbat Abd Rabbo, hurled explosives at the Israeli armed forces and managed to drag a wounded Israeli soldier into the house. From the facts it has itself gathered, the Mission can exclude that in this incident the Palestinian combatants managed to capture an Israeli soldier. This example suggests that some websites of Palestinian armed groups might magnify the extent to which Palestinians successfully attacked Israeli forces in urban areas.

459. Other sources reviewed by the Mission confirm scepticism about the intensity of attacks on the Israeli armed forces by Palestinian armed groups in built-up areas. The Mission notes that a thread running through many of the Israeli soldiers' testimonies collected by the Israeli NGO Breaking the Silence is that they had no encounters with Palestinian combatants.[314] According to another NGO report, "Hamas fighters plainly were frustrated by their inability to engage in street

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[311] "Gaza's unfinished business…", p. 3.

[312] See the case of Majdi Abd Rabbo in chapter XIV.

[313] "The hidden dimension of Palestinian war casualties…", pp. 1-2 and 20.

[314] *Soldiers' Testimonies…* , testimony 34, p. 76, and Rabin Academy testimonies.

battles".[315] Generally, the Mission received relatively few reports of actual crossfire between the Israeli armed forces and Palestinian armed groups. This would also appear to be reflected in the low number of Israeli soldiers killed or injured during the ground offensive.[316] The Mission also notes that in none of the incidents it investigated was there any indication that civilians were killed in crossfire between Palestinian armed groups and the Israeli armed forces.

460. While the Mission is unable to form an opinion on the exact nature or the intensity of combat activities carried out by the armed groups in urban residential areas that would have placed the civilian population and civilian objects at risk of attack, their presence in these areas as combatants is established from the information that has come to the attention of the Mission.

B. Booby-trapping of civilian houses

461. In chapter XIV the Mission will report on different incidents in which witnesses have described the circumstances in which they had been used by the Israeli armed forces during house searches and forced at gunpoint to enter houses ahead of the Israeli soldiers. These witnesses testified that they had been used in this way to enter several houses. None of them encountered a booby trap or other improvised explosive devices during the house searches. The Mission is also mindful of other incidents it has investigated that involved entry into civilian houses by Israeli soldiers in different areas in Gaza. None of these incidents showed the use of booby traps.

462. The Mission, however, recalls the allegations levelled in the reports that it has reviewed. The Government of Israel alleges that Hamas planted booby traps in "homes, roads, schools and even entire neighbourhoods". It adds, "in essence, the Hamas strategy was to transform the urban areas of the Gaza Strip into a massive death trap for IDF forces, in gross disregard for the safety of the civilian population."[317] The Mission notes that the existence of booby-trapped houses is mentioned in testimonies of Israeli soldiers collected by Breaking the Silence. One soldier recounts witnessing the detonation of a powerful explosion inside a house as a bulldozer approached it. A second soldier stated "many explosive charges were found, they also blew up, no one was hurt. Tank Corps or Corps of Engineers units blew them up. Usually they did not explode because most of the ones we found were wired and had to be detonated, but whoever was supposed to detonate them had run off. It was live, however, ready…".[318] Also the reports published by Palestinian armed groups, on which the submission to the Mission on the tactics of Palestinian combatants by the Jerusalem Centre for Public Affairs is based, suggest that booby-

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[315] According to the International Crisis Group, Hamas "tried to draw Israeli troops into densely populated urban areas, especially Hamas strongholds that had been prepared for counter-attack. A fighter described battles as a lethal 'game of hide and seek' in which Israel sought to lure fighters into open space, while Hamas attempted to bring Israeli troops onto their preferred terrain. The soldiers refused the bait, Hamas fighters plainly were frustrated by their inability to engage in street battles." ("Gaza's unfinished business…", p. 3).

[316] Israeli armed forces reportedly lost 10 soldiers in combat between 27 December 2008 and 18 January 2009, with dozens of soldiers wounded. Four of the Israeli dead appear to have been killed by friendly fire (Cordesman, op. cit., p. 57).

[317] "The operation in Gaza…", paras 181.

[318] *Soldiers' testimonies…*, testimony 20, p. 48, and testimony 23, p. 54.

trapped civilian houses were a frequently used tactic.[319] According to the Israeli Government, "because roads and buildings were often mined, IDF forces had to target them to protect themselves".[320]

463. While, in the light of the above reports, the Mission does not discount the use of booby traps by the Palestinian armed groups, it has no basis to conclude that civilian lives were put at risk, as none of the reports record the presence of civilians in or near the houses in which booby traps are alleged to have been set.

C. Use of mosques to launch attacks against the Israeli armed forces or to store weapons

464. The Israeli Government alleges that "Hamas abused the protection accorded to places of worship, making a practice of storing weapons in mosques". This assertion is supported by pictures of Israeli soldiers in a room amid weaponry, including anti-tank weapons, which are alleged to have been taken upon discovery of a weapons cache in a Jabaliyah mosque during the military operations.[321] The Mission notes that Israeli soldiers speaking at the Rabin Academy "Fighters' Talk" recount coming under fire from Palestinian combatants positioned in a mosque.[322]

465. Although the Mission was not able to investigate the allegation of the use of mosques generally by Palestinian groups for storing weapons, it did investigate the incident of a missile attack by the Israeli armed forces against al-Maqadmah mosque on the outskirts of Jabaliyah camp, in which at least 15 people were killed and 40 injured on 3 January 2009 (see chap. XI). The Mission found no evidence that this mosque was used for the storage of weapons or any military activity by Palestinian armed groups. As far as this mosque is concerned, therefore, the Mission found no basis for such an allegation. However, the Mission is unable to make a determination regarding the allegation in general nor with respect to any other mosque that was attacked by the Israeli armed forces during the military operations.

D. Misuse of medical facilities and ambulances

1. Use of hospitals for military purposes

466. The Government of Israel alleges that

> Hamas systematically used medical facilities, vehicles and uniforms as cover for terrorist operations, in clear violation of the Law of Armed Conflict. This included the extensive use of ambulances bearing the protective emblems of the Red Cross and

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[319] See "The hidden dimension of Palestinian war casualties…".

[320] "The operation in Gaza…", paras 184. On the destruction of civilian houses by the Israeli armed forces, see chap. XIII.

[321] "The operation in Gaza…", para. 164. The Mission notes that there is no mention of which mosque in Jabaliyah the pictures allegedly refer to nor of the date on which the weapons cache was found and the pictures taken.

[322] "Fighters' Talk" testimonies, pp. 4-5.

> Crescent … and the use of hospitals and medical infrastructure as headquarters, situation rooms, command centres and hiding places.[323]

467. As described in detail in chapter IX, the Mission investigated the attacks against al-Quds hospital in Tal el-Hawa, one of the hospitals which were allegedly used for military purposes by Palestinian armed groups. This hospital was directly hit by white phosphorous shells and at least one high explosive shell on 15 January 2009. The Mission conducted extensive interviews with al-Quds hospital staff and others who were in the area at the time of the attack and concluded that it was unlikely that there was any armed presence in any of the hospital buildings at that time. The Mission also investigated the attacks against al-Wafa Hospital in eastern Gaza City. As in the case of al-Quds hospital, after hearing credible testimony from doctors at that hospital, the Mission excluded the possibility that there were combatants inside the hospital at the time of the attack. However, the Mission did not make any findings with respect to the possible presence of Palestinian combatants in the surroundings of the hospital.

468. In its report, the Government of Israel states that Hamas used two units and a ground-floor wing of al-Shifa hospital, the largest in the Gaza Strip, as a military base.[324] As its sources, it cites an interview with a "Hamas activist" captured by Israel and an Italian newspaper article,[325] which in turn bases this assertion on a single anonymous source. The Mission did not investigate the case of al-Shifa hospital and is not in a position to make any finding with regard to these allegations.

469. On the basis of the investigations it has conducted, the Mission did not find any evidence to support the allegations made by the Israeli Government.

2. Ambulances

470. The Government of Israel alleges that "Hamas made particular use of ambulances, which frequently served as an escape route out of a heated battle with IDF forces."[326]

471. The Mission investigated cases in which ambulances were denied access to wounded Palestinians. Three cases in particular are described in chapter XI: the attempts of the Palestinian Red Crescent Society (PRCS) to evacuate the wounded from the al-Samouni neighbourhood south of Gaza City after the attack on the house of Ateya al-Samouni and after the shelling of the house of Wa'el al-Samouni; the attempt of an ambulance driver to rescue the daughters of Khalid and Kawthar Abd Rabbo in Izbat Abd Rabbo; and the attempt of an ambulance driver to evacuate Rouhiyah al-Najjar after she had been hit by an Israeli sniper. In all three cases the Mission found, on the facts it gathered, that the Israeli armed forces must have known that there were no combatants among the people to be rescued or in the immediate vicinity.

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[323] "The operation in Gaza…", para. 171.

[324] Ibid., para. 172. "Ismail Haniyeh, the head of Hamas in the Gaza Strip, located his Southern Command centre in one of the Shifa Hospital units, while the senior leaders of Hamas stationed themselves in another unit."

[325] *Corriere della Serra*, "Cosi i ragazzini di Hamas'ci hanno utilizzato come bersagli", 21 January 2009.

[326] "The operation in Gaza…", para. 176.

472. The Mission is aware of an interview reportedly given by an ambulance driver to an Australian newspaper, in which he describes how Palestinian combatants unsuccessfully tried to force him to evacuate them from a house in which they were apparently trapped. The same driver reportedly told the journalist that "Hamas made several attempts to hijack the ambulance fleet of al-Quds Hospital". He also describes how the PRCS ambulance teams managed to avert this misuse of ambulances. According to this report, relied on by the Israeli Government, the attempts of Palestinian combatants to exploit ambulances as shield for military operations were not successful in the face of the courageous resistance of the PRCS staff members.[327]

473. This is consistent with the statements of representatives of the Palestinian Red Crescent Society in Gaza who, in interviews with the Mission, denied that their ambulances were used at any time by Palestinian combatants. Finally, in a submission to the Mission, Magen David Adom stated that "there was no use of PRCS ambulances for the transport of weapons or ammunition … [and] there was no misuse of the emblem by PRCS."[328]

474. While it is not possible to say that no attempts were ever made by any armed groups to use ambulances during the military operations, the Mission has substantial material from the investigations it conducted and the enquiries it made to convince it that, if any ambulances were used by Palestinian armed groups, it would have been the exception, not the rule. None of the ambulance drivers that were directly interviewed by the Mission reported any attempt by the armed groups to use the ambulances for any ulterior purpose. Moreover, of the ambulance staff members and their volunteer assistants that were killed or injured in the course of their duties, none was a member of any armed groups, so far as the Mission is aware.

E. Forcing civilians to remain in an area for the specific purpose of sheltering that area or forces in that area from attack

475. As discussed in more detail in other parts of the report, the Mission asked numerous witnesses in Gaza why they had stayed in their homes in spite of the shelling, bombing and Israeli ground invasion. They stated that they had decided to stay put either because they had experienced previous incursions and, based on past experience, did not think they would be at risk as long as they remained indoors[329] or because they had no safe place to go.[330] In additional, some witnesses stated that they had chosen to stay because they wished to watch over their homes and property.[331] The Mission did not find any evidence of civilians being forced to remain in their houses by Palestinian armed groups.

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[327] Ibid., para. 177-179.

[328] Communication by Magen David Adom to the Mission, 9 August 2009. Magen David Adom is Israel's national emergency medical, disaster, ambulance and blood bank service. It is a member of the International Federation of Red Cross and Red Crescent Societies and has a long-standing cooperation with the Palestinian Red Crescent Society. That no PRCS ambulances had been used to transport weapons or fighters was also stated forcefully by a Magen David Adom representative to representatives of the Mission in Geneva on 22 July 2009.

[329] Mission interview with Khaled Abd Rabbo.

[330] See chap. IX.

[331] Interview with Abbas Ahmad Ibrahim Halawa, 3 June 2009 (see chap. XIV on the case of Abbas Ahmad Ibrahim Halawa).

476. The Mission's attention has been drawn to a well-known incident in which women and children followed calls to gather on the roof of the house of a Palestinian man who had been informed by the Israeli authorities that his house would be targeted. This incident has been documented in video footage in the public domain[332] and is referred to in submissions received by the Mission as evidence of the use of human shields. The Mission notes, however, that the incident occurred in 2007. No such incidents are alleged by the Israeli Government with regard to the military operations that began on 27 December 2008. The Mission received no reports of such incidents from other sources. On the contrary, in one case investigated by the Mission,[333] a Hamas official received a phone call from the Israeli armed forces to the effect that his house would soon be targeted. He evacuated the house with his family and alerted the neighbours to the imminent threat so that they, too, were able to leave their homes before the missile did indeed strike.

477. The Mission is also aware of the public statement by Mr. Fathi Hammad, a Hamas member of the Palestinian Legislative Council, on 29 February 2009, which is adduced as evidence of Hamas' use of human shields. Mr. Hammad reportedly stated that

> … the Palestinian people has developed its [methods] of death seeking. For the Palestinian people, death became an industry, at which women excel and so do all people on this land: the elderly excel, the mujahideen excel and the children excel. Accordingly, [Hamas] created a human shield of women, children, the elderly and the mujahideen, against the Zionist bombing machine.[334]

478. Although the Mission finds this statement morally repugnant, it does not consider it to constitute evidence that Hamas forced Palestinian civilians to shield military objectives against attack. The Government of Israel has not identified any such cases.

F. Mingling with the civilian population to shield combatants against attack

479. When military operations take place in areas in which civilians are present, the importance of military dress and distinctive signs to distinguish combatants from civilians is all the greater. The Mission notes that only one of the incidents it investigated clearly involved the presence of Palestinian combatants. In that incident, the witness told the Mission that three fighters trapped in his neighbour's house were "wearing military camouflage and headbands of the al-Qassam Brigades".[335]

480. Reports on the military operations by NGOs suggest that in general members of Palestinian armed groups did not wear military uniforms. One report states that after the destruction caused by the Israeli air strikes at the start of the military operations, members of al-

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[332] See http://switch3.castup.net/cunet/gm.asp?ai=58&ar=StandingOnRoof-V&ak=null.

[333] See the case of Mr. Abu Askar in chapter X.

[334] "The operation in Gaza…", para. 186. A video recording of this speech is available at http://www.youtube.com/watch?v=ArJbn-lUCh4.

[335] See the case of Mr. Majdi Abd Rabbo in chapter XIV.

Qassam Brigades abandoned military dress and patrolled streets "in civilian clothes".[336] A second report states that members of the Palestinian armed groups "also mixed with the civilian population, although this would be difficult to avoid in the small and overcrowded Gaza Strip, and there is no evidence that they did so with the intent of shielding themselves".[337]

481. Finally, on this issue, it is relevant to mention that the Israeli Government has produced no visual or other evidence to support its allegation that Palestinian combatants "mingle routinely with civilians in order to cover their movements".[338]

G. Factual findings

482. On the basis of the information it gathered, the Mission finds that there are indications that Palestinian armed groups launched rockets from urban areas. The Mission has not been able to obtain any direct evidence that this was done with the specific intent of shielding the rocket launchers from counterstrokes by the Israeli armed forces. The Mission also notes, however, that Palestinian armed groups do not appear to have given Gaza residents sufficient warning of their intention to launch rockets from their neighbourhoods to allow them to leave and protect themselves against Israeli strikes at the rocket launching sites. The Mission notes that, in any event, given the densely populated character of the northern half of the Gaza Strip, once Israeli forces gained control of the more open or outlying areas during the first days of the ground invasion, most -- if not all -- locations still accessible to Palestinian armed groups were in urban areas.

483. The Mission finds that the presence of Palestinian armed fighters in urban residential areas during the military operations is established. On the basis of the information it gathered, the Mission is unable to form an opinion on the exact nature or the intensity of their combat activities in urban residential areas that would have placed the civilian population and civilian objects at risk of attack. While reports reviewed by the Mission credibly indicate that members of Palestinian armed groups were not always dressed in a way that distinguished them from civilians, the Mission found no evidence that Palestinian combatants mingled with the civilian population with the intention of shielding themselves from attack.[339]

484. From the information it gathered, the Mission does not discount the use of booby traps by the Palestinian armed groups. The Mission has no basis to conclude that civilian lives were put at risk, since none of the reports records the presence of civilians in or near the houses that were allegedly booby-trapped.

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[336] "Gaza's unfinished business…", p. 8. This report also appears to suggest that members of al-Qassam Brigades were at least in part engaged in law enforcement and internal security functions rather than in combat with the Israeli armed forces.

[337] *Israel/Gaza: Operation "Cast Lead": 22 days…*

[338] "The operation in Gaza…", para. 186.

[339] It has also been reported that specialist Israeli troops operated in Gaza during the military operations in civilian attire to liaise with informants and as *francs-tireurs*; Jane's Sentinel Services, Country Risk Assessments – Israel, 30 January 2009.

485. On the basis of its own investigations and statements by United Nations officials, the Mission excludes that Palestinian armed groups engaged in combat activities from United Nations facilities that were used as shelters during the military operations. The Mission cannot discount the possibility that Palestinian armed groups were active in the vicinity of such facilities.

486. The Mission is unable to make any determination on the general allegation that Palestinian armed groups used mosques for military purposes. It notes that, in the one incident it investigated of an Israeli attack on a mosque, it found no indication that the mosque was so used.

487. On the basis of the investigations it has conducted, the Mission did not find any evidence to support the allegations that hospital facilities were used by the Gaza authorities or by Palestinian armed groups to shield military activities and that ambulances were used to transport combatants or for other military purposes.

488. On the basis of the information it gathered, the Mission found no indication that the civilian population was forced by Hamas or Palestinian armed groups to remain in areas under attack from the Israeli armed forces.

H. Legal findings

489. Customary international humanitarian law establishes that all "parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks."[340]

490. Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas.[341] Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.[342]

491. These rules of customary international law are reflected in article 57 (1) of Additional Protocol I: "In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects." The following paragraphs of article 57 set forth the specific precautions to be taken by a party launching an attack.[343]

492. In addition to the general duty to take constant care to spare the civilian population in the conduct of military operations, international humanitarian law establishes a specific prohibition against the use of civilians as human shields. Article 28 of the Fourth Geneva Convention specifically addresses this issue: "The presence of a protected person may not be used to render certain points or areas immune from military operations". This is reinforced by article 51 (7) of Additional Protocol I:

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[340] *Customary International Humanitarian Law...*, rule 22.

[341] Ibid., rule 23.

[342] Ibid., rule 24.

[343] See chap. IX.

> The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

These provisions reflect rules of customary law.[344]

493. The Mission finds it useful to clarify what is meant, from a legal perspective, by using civilians or a civilian population as a human shield. Parties to a conflict are not permitted to use a civilian population or individual civilians in order to render certain points or areas immune from military operations. It is not in dispute that both Palestinian armed groups and Israeli forces were fighting within an area populated by civilians. Fighting within civilian areas is not, by itself, sufficient for a finding that a party is using the civilian population living in the area of the fighting as a human shield. As the words of article 57 (1) show ("shall not be used to render", "in order to attempt to shield"), an intention to use the civilian population in order to shield an area from military attack is required.

494. From the information available to it, the Mission found no evidence to suggest that Palestinian armed groups either directed civilians to areas where attacks were being launched or forced civilians to remain within the vicinity of the attacks.

495. The reports received by the Mission suggest that it is likely that the Palestinian armed groups did not at all times adequately distinguish themselves from the civilian population among whom the hostilities were being conducted. Their failure to distinguish themselves from the civilian population by distinctive signs is not a violation of international law in itself, but would have denied them some of the legal privileges afforded to combatants. What international law demands, however, is that those engaged in combat take all feasible precautions to protect civilians in the conduct of their hostilities. The Mission found no evidence that members of Palestinian armed groups engaged in combat in civilian dress. It can, therefore, not find a violation of the obligation not to endanger the civilian population in this respect.

496. The conduct of hostilities in built-up areas does not, of itself, constitute a violation of international law. However, launching attacks - whether of rockets and mortars at the population of southern Israel or at the Israeli armed forces inside Gaza - close to civilian or protected buildings constitutes a failure to take all feasible precautions. In cases where this occurred, the Palestinian armed groups would have unnecessarily exposed the civilian population of Gaza to the inherent dangers of the military operations taking place around them. This would have constituted a violation of the customary rules of international humanitarian law referred to above. It would also have constituted a violation of the right to life and physical integrity of the civilians thereby endangered.

497. Although the situations investigated by the Mission did not establish the use of mosques for military purposes or to shield military activities, the Mission cannot exclude that this might

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[344] *Customary International Humanitarian Law...*, rule 97.

have occurred in other cases. As far as hospitals and United Nations facilities are concerned, the Mission found that it could not exclude that Palestinian armed groups engaged in combat activities in the vicinity of these protected sites. The Mission wishes to emphasize that the launching of attacks from or in the vicinity of civilian buildings and protected areas are serious violations of the obligation on the armed groups to take constant care to protect civilians from the inherent dangers created by military operations.

498. The Mission asked the Gaza authorities to provide information on the sites from where the Palestinian armed groups had launched attacks against Israel and against the Israeli armed forces in Gaza. The Mission similarly asked whether, to their knowledge, civilian buildings and mosques had been used to store weapons. In their response, the Gaza authorities stated that they had no information on the activities of the Palestinian armed groups or about the storage of weapons in mosques and civilian buildings. The Mission does not find this response to be entirely plausible. The Mission notes, more importantly, that, whether the answer reflects the reality or not, the Gaza authorities are obliged under international law to control the activities of armed groups operating on the territory under their control.[345] If they failed to take the necessary measures to prevent the Palestinian armed groups from endangering the civilian population by conducting hostilities in a manner incompatible with international humanitarian law, they would bear responsibility for the damage done to the civilians living in Gaza.

IX. OBLIGATION ON ISRAEL TO TAKE FEASIBLE PRECAUTIONS TO PROTECT CIVILIAN POPULATION AND CIVILIAN OBJECTS IN GAZA

499. This chapter focuses on incidents where the Mission considered compliance by Israel with its obligations under the Fourth Geneva Convention and customary rules of international law in relation to taking feasible precautions. In particular, it considers whether everything feasible was done to verify that objectives to be attacked were neither civilians nor civilian objects and were not subject to special protection, whether all feasible precautions were taken in respect of the choice of weapons used and whether the military advantage sought was excessive in relation to the expected loss of civilian life or civilian objects. Before entering into specific incidents, it considers the obligation to provide warnings in relation to attacks.

A. Warnings

500. The Israeli Government has stated that it took the following steps to warn the civilian population of Gaza:[346]

- The Israeli armed forces made 20,000 calls on 27 December and 10,000 on 29 December 2008;
- 300,000 warning notes were dropped over the whole of the Gaza Strip on 28 December;
- 80,000 leaflets were dropped in Rafah on 29 December;

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[345] See chap. IV.

[346] http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm.

- In the context of the beginning of ground operations on 3 January, 300,000 leaflets were dropped in the entire Gaza Strip, especially in the northern and eastern parts;

- On 5 January, 300,000 leaflets were dropped in Gaza City, Khan Yunis and Rafah;

- In total some 165,000 telephone calls were made throughout the military operations;[347]

- In total some 2,500,000 leaflets were dropped.[348]

501. In addition to these measures, the Israeli Ministry of Foreign Affairs explains that the telephone calls were both direct calls and pre-recorded messages, that it made radio broadcasts, and that it developed a practice of dropping apparently light explosives on rooftops (referred to by some as "roof-knocking").[349]

502. The Mission has reviewed the text of several of the leaflets dropped by the Israeli armed forces and listened to all of the messages recorded on the website of the Israeli Ministry of Foreign Affairs.[350] It accepts that Israel dropped leaflets, made phone calls, left recorded messages and dropped smaller explosives on roofs as stated by the Israeli Government.

1. Telephone calls

503. The Mission received first-hand information about some of these methods in its interviews with witnesses in Gaza. In the report on the attack at al-Fakhura Street junction (see chap. X), the Mission notes the credible account of Mr. Abu Askar of the telephone warning he received as a result of which he was able to evacuate up to 40 people from his and other houses. He received that call at around 1.45 a.m. and Israeli forces destroyed his house with a missile strike seven minutes later.

504. The Mission is also aware of circumstances in which telephone warnings may have caused fear and confusion. Al-Bader Flour Mills Co. (see chap. XIII) received two recorded messages indicating the mill was to be destroyed, but neither of these was acted upon. Five days later the mill was struck in the early hours of the morning with no warning whatsoever. The owners of the business and their staff suffered anxiety by having to evacuate the premises on two occasions as a result of receiving such messages when no strikes took place.

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[347] "The operation in Gaza…", para. 264.

[348] Ibid.

[349] http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm .With regard to roof-knocking, see, for instance, Cordesman, op. cit., p. 13 (the Israeli armed forces "developed small 10-20 kilogram bombs that could be used as both warning shots – sometimes referred to as knocking on the roof"…).

[350] http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm.

505. Israel's Ministry of Foreign Affairs states that more than 165,000 telephone calls were made issuing warnings. The Mission has received information that there were at least two types of telephone calls. One was a direct and specific warning, as was received by Mr. Abu Askar. The other was a more generic, recorded message, such as the type received by al-Bader Flour Mills. The Mission does not know and, as far as it can determine, Israel has not indicated what proportion of the 30,000 telephone calls was pre-recorded and more generic and what proportion was specific.

2. Roof-knocking

506. The Israeli Government describes that in certain circumstances its armed forces fired "warning shots from light weapons that hit the roofs of the designated targets"—a practice referred to as roof-knocking. The Israeli Government indicates that this practice was used when it appeared that people had remained in their houses despite being given some previous warning.351 It is not clear whether this was the only circumstance in which this method was employed. The Mission heard that in the al-Daya incident (see chap. XI) the Israeli Government claims to have made such a warning shot, albeit to the wrong house.352 The Mission also saw in the Sawafeary house (see chap. XIII) that a missile had penetrated the rear of the house on the wall near the ceiling, gone through an internal wall and exited through the wall at the front of the house near the windows. At the time (around 10 p.m. on 3 January 2009) there were several family members in the house, who happened to be lying down. The Mission cannot say what size of weapon was used on this occasion, although it was sufficiently powerful to penetrate three walls, or whether it was intended as a warning.

3. Radio broadcasts and leaflet dropping

507. The radio broadcasts that the Mission listened to appeared to be generic. For example, on 3 January 2009 a radio broadcast made the following points:

- Gaza residents are welcome to receive food and medical supplies, delivered via the Rafah, Karni and Kerem Shalom passages, at the UNRWA centres throughout the Gaza Strip;
- Israel calls on the population to move to city centres for its own safety.[353]

This warning preceded the ground phase of the military operations. Its language clearly indicates that UNRWA centres should be regarded as places of safety and civilians may collect food from them.

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[351] "The operation in Gaza…", para. 264.

[352] Note that a witness has indicated that an elderly man was killed when struck by a missile some 10 minutes before the al-Daya house was struck. The Mission has also noted significant doubts on the version of events presented by the Israeli Government on this case, including on the issue of the warning shot.

[353] http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm.

508. Leaflets dropped appear to fall into a number of categories. One leaflet did not deal with attacks on a particular place but on the storage of weapons and ammunition:

> To the residents of the Gaza Strip;
>
> - The IDF will act against any movements and elements conducting terrorist activities against the residents of the State of Israel;
> - The IDF will hit and destroy any building or site containing ammunition and weapons;
> - As of the publication of this announcement, anyone having ammunition and/or weapons in his home is risking his life and must leave the place for the safety of his own life and that of his family;
> - You have been warned.[354]

509. In some areas specific warnings were sometimes given. One example of a sufficiently specific warning is that issued to the residents of Rafah:

> Because your houses are used by Hamas for military equipment smuggling and storing, the Israeli Defense Forces (IDF) will attack the areas between Sea Street and till the Egyptian border…
>
> All the Residents of the following neighbourhoods: Block O – al-Barazil neighbourhood – al-Shu'ara'- Keshta- al-Salam neighbourhood should evacuate their houses till beyond Sea Street. The evacuation enters into force from now till tomorrow at 8 a.m.
>
> For your safety and for the safety of your children, apply this notice.[355]

4. Factual findings

510. Whether a warning is deemed to be effective is a complex matter depending on the facts and circumstances prevailing at the time, the availability of the means for providing the warning and the evaluation of the costs to the purported military advantage.

511. Israel was in a strong position to prepare and issue effective warnings. The preparations for its military operations were "extensive and thorough."[356] Israel had intimate knowledge and

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[354] Ibid.

[355] "No safe place", report of the Independent Fact Finding Committee on Gaza presented to the League of Arab States (30 April 2009), p. 241. Note a similarly specific kind of warning issued to the residents of al-Shujaeiyah ("The operation in Gaza…", footnote 225).

[356] Prime Minister Olmert, press conference on 27 December 2008, available at: http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2008/PM_Olmert_press_briefing_IDF_operation_Gaza_Strip_27-Dec-2008.htm.

sophisticated up-to-date intelligence in its planning. It had the means to use the landlines and mobile telephone networks. It had complete domination of Gaza's airspace. In terms of the practical capabilities of issuing warnings, it is perhaps difficult to imagine more propitious circumstances.

512. The Mission accepts that the element of surprise that was sought in the initial strikes might well have provided a degree of justification for not giving any advance notice of the time the strikes would take place or the buildings that would be struck.[357]

(a) The question of whether civilians could be expected to respond to the warnings to leave their homes

513. The Mission recognizes that leaflets dropped from the air can have some direct benefit in assisting the civilian population to get out of harm's way. The effectiveness will depend on three considerations: the clarity of the message, the credibility of the threat and the possibility of those receiving the warning taking action to escape the threat.

514. The Mission has already cited one kind of leaflet which referred to the likelihood of attacks on locations storing weapons and ammunitions. At the beginning of the land-air phase of the operations, the Israeli armed forces also dropped leaflets and made broadcasts advising people to move towards city centres.

515. There had been an intense aerial campaign from 27 December 2008 until 3 January 2009 that had seen hundreds of buildings destroyed in built-up areas of city centres. Civilians not living in city centres were being asked to leave their homes to go to places that as far as they could reasonably assess were already in much more danger than they were in their own homes. In order for the warning to be effective there had to be an objective basis to believe that they would be safer elsewhere. The Mission does not consider that such an objective evaluation could reasonably have been made by civilians in the Gaza Strip.

516. During its meetings with people in Gaza the Mission was told on several occasions of the sense that there was "nowhere to go". The nature of the attacks in the first week had caused deep shock. The widespread attacks created a dilemma not only about where to go but about whether it was safe to leave at all.

517. Even if in the minds of the Israeli armed forces it would have been safer, from 3 January onwards, for civilians to go to city centres, nothing that had happened in the preceding week could lead those civilians to the same conclusion given the widespread destruction of areas and buildings. The events that occurred in those locations after 3 January appear to support the view that going to the city centres offered little guarantee of safety.

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[357] The recognition of a legitimate element of surprise does not necessarily mean that the Mission accepts the targets chosen were legally justifiable in the circumstances. That matter is dealt with in different parts of this report.

(b) Events in the city centre after the warning to go there was issued

518. On 3 January 2009 the attack on al-Maqadmah mosque took place in a built-up area in central Jabaliyah. Three days after the 3 January warning was given to move to central locations and attend United Nations centres there was the Israeli mortar attack immediately outside a large United Nations shelter killing at least 35 people in Jabaliyah at al-Fakhura Street.[358]

519. Following the attack in al-Fakhura Street, the Director of Operations in Gaza of UNRWA, John Ging, stated in a press conference on 7 January 2009: "There is nowhere safe in Gaza. Everyone here is terrorized and traumatized."[359]

520. On 15 January the UNRWA compound in Tal el-Hawa (Gaza City) was seriously damaged when it was struck by white phosphorous. Between 600 and 700 civilians were sheltering there at the time and were put in grave danger. The same day the nearby al-Quds hospital was struck directly by a number of missiles, including white phosphorous shells, again putting staff and patients in great danger (see sect. C below).

521. The day after the UNRWA compound was hit, John Ging repeated that what had happened there had happened throughout Gaza. He said that the United Nations and the civilian population were "all in the same boat" and that nobody could be said to be safe in Gaza.[360]

(c) The inference that those who did not go to the city centres must be combatants

522. The warning to go to city centres came at the start of the ground invasion. In the Mission's view it was unreasonable to assume, in the circumstances, that civilians would indeed leave their homes. As a consequence, the conclusion that allegedly formed part of the logic of soldiers on the ground that those who had stayed put had to be combatants was wholly unwarranted.[361] There are many reasons why people may not have responded. In several cases the Mission heard from witnesses about people who were physically disabled, too frail or deaf so that it was difficult or impossible to respond to the warning. In other cases, as outlined above, civilians who

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[358] The Mission concludes elsewhere that this attack was indiscriminate in nature (see chap. X).

[359] *The Daily Mail*, "Gaza's darkest day: 40 die as Israel bombs 'safe haven' UN school", 7 January 2009.

[360] Press conference on humanitarian situation in Gaza (16 January 2009), available at http://www.un.org/News/briefings/docs/2009/090116_Gaza.doc.htm. See also "No safe place", p. 74.

[361] See, for example, statements made by soldiers in a seminar in Tel Aviv: "At first we were told to break into a house… Go upstairs and shoot every person we see… The upper echelons said this was allowed because anyone remaining in this area, inside Gaza City, is incriminated, a terrorist, who did not escape."

Transcript of seminar from Channel 10 News on file with Mission. See also Breaking the Silence, *Soldiers' Testimonies from Operation Cast Lead, Gaza 2009*, available at: http://www.breakingthesilence.org.il/oferet/ENGLISH_oferet.pdf. Throughout the report soldiers indicate that the rules of engagement employed meant that no consideration was given to the idea that there may be "innocents" and that in the case of any doubt whatsoever soldiers were to shoot. ("That too was mentioned, that if we see something suspect and shoot, better to hit an innocent that hesitate to target an enemy", p. 50; "if anything arouses our suspicion, we mustn't hesitate because the enemy hides among civilians", p. 51.) Note also the discussion on "wet entry" and "dry entry" (pp. 14-15. This discussion indicates that, in approaching a house, missiles, tank fire, grenades and machine gun fire would be used. This method of approach is borne out in the case of the Juha family. Family members were fired upon when congregating in a room downstairs in their house in Zeytoun. See chap. XI.

could have responded may have had legitimate reasons not to do so. The issuance of warning is one measure that should be taken wherever possible. The fact that a warning was issued does not, however, relieve a commander or his subordinates from taking all other feasible measures to distinguish between civilians and combatants.[362]

523. Israeli armed forces had created the circumstances in which civilians could not reasonably believe the city centres were safe. An effective warning had to make clear why, even in those circumstances, it was better for civilians to leave than to stay in their homes.

5. Israel's review

524. According to press reports,[363] military sources, including representatives from the military prosecution's international law department, have agreed that more specific information, such as more accurate timetables for strikes to be carried out and escape routes, should be given in warnings. The press report goes on to say: "Fliers distributed by the IDF from now on will also be more detailed in order to make it clear to civilians that their lives are in danger and give them a chance to flee. It was also determined in the hearing that the military made multiple efforts to prevent civilian casualties in January's offensive."

525. The Mission cannot confirm if such press reports are accurate but notes two things. Firstly, any improvements in practice in this regard are to be welcomed. Secondly, the changes, if reported correctly, appear to address the matters that have been touched on in this section. Those were matters that could not be considered in any way as unforeseeable in the circumstances at the time the warnings were in fact issued. While improvements are welcome in this case, it would also appear to indicate that circumstances almost certainly permitted much better warnings to be given than was the case.

6. Legal findings

526. Chapter IV of Additional Protocol I to the Geneva Conventions addresses the issue of precautionary measures that must be taken. Article 57 (1) states that "in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects."

527. Article 57 (2) (c) requires that "effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit."

528. The Mission regards both these provisions to be norms of customary international law.[364] In addition, Israel appears to consider itself bound by the obligation to provide effective warnings under customary law.

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[362] Note in particular the testimony of Prof. Michael Newton to the Mission at the Geneva public hearings on 7 July 2009. See http://www.un.org/webcast/unhrc/archive.asp?go=090707.

[363] See *Ynetnews*, "IDF to give better warnings before attacks", 29 September 2007.

[364] According to ICRC, article 57 (1) codifies the principle of precautions in attack and article 57 (2) (c) is a rule of customary international law applicable to international and non-international armed conflict. *Customary International Humanitarian Law*..., pp. 51 and 62.

529. The determination of whether the circumstances permit a warning must be made in the context of a good-faith attempt to adhere to the underlying duty to minimize death and injury to civilians or damage to civilian objects. The key limitation on the application of the rule is if the military advantage of surprise would be undermined by giving a warning. The same calculation of proportionality has to be made here as in other circumstances. The question is whether the injury or damage done to civilians or civilian objects by not giving a warning is excessive in relation to the advantage to be gained by the element of surprise for the particular operation. There may be other circumstances when a warning is simply not possible.

530. Article 57 (2) (c) requires the warning to be effective. The Mission understands by this that it must reach those who are likely to be in danger from the planned attack, it must give them sufficient time to react to the warning, it must clearly explain what they should do to avoid harm and it must be a credible warning. The warning also has to be clear so that the civilians are not in doubt that it is indeed addressed to them. As far as possible, warnings should state the location to be affected and where the civilians should seek safety. A credible warning means that civilians should be in no doubt that it is intended to be acted upon, as a false alarm of hoax may undermine future warnings, putting civilians at risk.

(a) Pre-recorded generic telephone calls

531. As regards the generic nature of some pre-recorded phone messages, the Mission finds that these lacked credibility and clarity, and generated fear and uncertainty. In substance, there is little difference between telephone messages and leaflets that are not specific. The Mission takes the view that pre-recorded messages with generic information may not be considered generally effective.

(b) Warning shots delivered to roofs

532. The Mission is doubtful whether roof-knocking should be understood as a warning as such.[365] In the context of a large-scale military operation including aerial attacks, civilians cannot be expected to know whether a small explosion is a warning of an impending attack or part of an actual attack. In relation to the incident at the Sawafeary house recounted above, the Mission cannot say for certain if this missile was meant to warn or to kill. It notes that, if this was meant as a warning shot, it has to be deemed reckless in the extreme.

533. The legal requirement is for an effective warning to be given. This means that it should not require civilians to guess the meaning of the warning. The technique of using small explosives to frighten civilians into evacuation, even if the intent is to warn, may cause terror and confuse the affected civilians.

534. The Mission does not have sufficient information to assess the accuracy of the Israeli Government's claim that the warning shot method was used only when previous warnings (leaflets, broadcasts or telephone calls) had not been acted upon. However, in many circumstances it is not clear why another call could not be made if it had already been possible to

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[365] The Mission notes and agrees with a similar position set out by Diakonia in its report on Operation Cast Lead of 30 June 2009, p. 9.

call the inhabitants of a house. The Mission notes that these warnings all took place in situations where the view appears to have been reached that those in the house are civilians or predominantly civilians. If the choice is between making another call or firing a light missile that carries with it a significant risk of killing those civilians, the Mission is not convinced that it would not have been feasible to make another call to confirm that a strike was about to be made.

535. Finally, apart from the issue of fear and ambiguity, there is the question of danger. The idea that an attack, however limited in itself, can be understood as an effective warning in the meaning of article 57 (2) (c) is rejected by the Mission.

(c) Leaflets

536. The leaflets and radio broadcasts that told people to leave their homes and head towards city centres were in most cases lacking in specificity and clarity: people could not be certain that the warnings were directed at them in particular, since they were being issued as far as they could tell to almost everyone, and they could not tell when they should leave since there was rarely an indication of when attacks would take place. Furthermore, in the circumstances created by the Israeli armed forces, people could not reasonably be expected to flee to what appeared to be even less safe places on the basis of such non-specific warnings. Therefore, the Mission does not consider such warnings to have been the most effective possible in the circumstances and, indeed, doubts that many were effective at all.

7. Conclusions

537. While noting the statements of the significant efforts made by the Israeli armed forces to issue warnings, the sole question for the Mission to consider at this point is whether the different kinds of warnings issued can be considered as sufficiently effective in the circumstances to constitute compliance with article 57 (2) (c).

538. The Mission accepts that the warnings issued by the Israeli armed forces in some cases encouraged numbers of people to flee and get out of harm's way in respect of the ground invasion, but this is not sufficient to consider them as generally effective.

539. The Mission considers that some of the leaflets with specific warnings, such as those that Israel indicates were issued in Rafah and al-Shujaeiyah, may be regarded as effective. However, the Mission does not consider that general messages telling people to leave wherever they were and go to city centres, in the particular circumstances of this military campaign, meet the threshold of effectiveness.

540. The Mission regards some specific telephone calls to have provided effective warnings but treats with caution the figure of 165,000 calls made. Without sufficient information to know how many of these were specific, it cannot say to what extent such efforts might be regarded as effective.

541. The Mission does not consider the technique of firing missiles into or on top of buildings as capable of being described as a warning, much less an effective warning. It is a dangerous practice and in essence constitutes a form of attack rather than a warning.

542. The Mission is also mindful of several incidents it has investigated where civilians were killed or otherwise harmed and met with humiliation and degrading treatment by Israeli soldiers, while fleeing from locations about which some form of warning was issued. The effectiveness of the warnings has to be assessed in the light of the overall circumstances that prevailed and the subjective view of conditions that the civilians concerned would take in deciding upon their response to the warning.

B. UNRWA compound, Gaza City

543. The field office compound of UNRWA is situated in the southern Rimal area of Gaza City. On the morning of 15 January 2009 it came under sustained shelling from the Israeli armed forces. At least three high explosive shells and seven white phosphorous container shells struck the workshop and warehouse area of the compound causing massive damage as a result of ensuing fires. Five of the shells exploded in the compound including all three high explosive shells. Two complete container shells of white phosphorous were retrieved. Five additional white phosphorous shells were retrieved but not in their complete form. These five shells deposited large amounts of the phosphorus wedges contained in the shells into the compound, if not in fact all of the wedges. At least three shells hit the Gaza Training Centre and caused light injuries to one staff member. At the time of the attack there were between 600 and 700 civilians sheltering in the compound. The remaining shells hit the area in and around the fuel depot and workshop.

544. The Mission has inspected the site and interviewed several of the people who were present at the time. It has also had access to detailed written materials produced by the UNRWA office in relation to its inquiries into the incident. It has furthermore addressed questions to the Government of Israel regarding the use of white phosphorous munitions to strike within the UNRWA compound and the direct military advantage pursued by their use under the circumstances, but has received no reply.

545. The Mission will not here repeat all of the details of the attack that are recounted accurately in a number of other reports.[366] It will, however, join with others in noting the bravery of two staff members in particular in dealing with the white phosphorous in close proximity to thousands of litres of fuel stored in tankers. Had the fuel depot exploded, it would have caused untold deaths and damage. The swift and courageous actions of these two people at huge personal risk may have prevented a disaster of gigantic proportions and their efforts should be so recognized.

546. In this particular case, the Mission's interest lay in what was known by the Israeli armed forces at the time, what steps were feasible to reduce the massive risk to civilian life and why were these steps not taken.

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[366] For instance, Secretary-General's summary of the Report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009 and reports by Human Rights Watch (*Rain of Fire: Israel's Unlawful Use of White Phosphorous in Gaza* (March 2009), pp. 41 ff) and Amnesty International (*Israel/Gaza: Operation "Cast Lead": 22 days of death and destruction* (London, 2009), p. 31).

1. The immediate context

547. Shelling had been ongoing since the night of 14 January. The areas of Tal el-Hawa and southern Rimal had come under attack. There had been shelling close to the UNRWA compound at various points during the night. In the morning of 15 January staff in the UNRWA compound were instructed to remain inside as much as possible.

2. The risks

548. The UNRWA compound contained, among other things, a substantial fuel depot. The depot has an underground storage facility, which at the time had about 120,000 litres of fuel. Fuel tankers parked above ground had around 49,000 litres of fuel in them. In addition to the obvious and immediate risk of fire in these circumstances, the compound also stored large quantities of medical supplies, food, clothing and blankets in the warehouses.

549. Conservative estimates suggest that between 600 and 700 civilians were taking shelter in the compound at that time.

550. The principal and immediate risk was, therefore, of what might have been a catastrophic fire caused by the ignition of the fuel in the direct vicinity of the site where hundreds of civilians had sought shelter directly in response to the Israeli warnings of 3 January 2009.

3. The strikes

551. The Mission considers the witnesses it interviewed about this incident to be reliable and credible. After careful analysis of the information it received, the Mission finds that the following can be established with a high degree of certainty:

552. Three high explosive shells hit the compound. Two landed on the Gaza Training Centre and one landed in the car park. Complete or substantial parts of seven white phosphorous container shells landed in the compound. The wedges in these container shells were either discharged totally or very substantially in the compound. One shell, which was seen directly by a senior international staff member with many years' of active military service, detonated on impact or only a very short distance from the ground.

553. One high explosive shell struck the Gaza Training Centre's yard and was witnessed by at least two guards and left a crater.

554. Two high explosive shells landed on the roof of the education building. There are two large holes in the roof and shrapnel all around.

555. A white phosphorous container shell struck the Project and Logistics Division Building.

556. One white phosphorous container shell hit the back of a vehicle in the spare parts store, coming through a wall on the south side at a high point. This is believed to have caused the fire to start in the workshop area.

557. One white phosphorous container shell or a substantial part thereof came through a wire fence at the top of the southern boundary of the compound near the spare parts and workshop area, causing damage to a vehicle there.

558. One white phosphorous container shell landed in the workshop embedding itself in the concrete.

559. One white phosphorous container shell or a substantial part thereof came through the roof of the painting bay.

560. One white phosphorous container shell or a substantial part thereof struck a manhole cover near small warehouses storing food.

561. One white phosphorous container shell struck near a generator on concrete ground.

562. Seven of the ten strikes occurred in an area smaller than a standard football pitch. The whole area, including the three other strikes on or near the Gaza Training Centre, would be no more than two football pitches.

563. The precise moment when each of the strikes occurred cannot be stated with certainty but all occurred between 8 a.m. and 12 noon.

4. Communications and responses

564. For the purposes of liaison with the Israeli authorities, the counterpart of the United Nations Department of Safety and Security (DSS) is the Coordinator of Government Activities in the Territories (COGAT). This is a unit within the Israeli Ministry of Defense. In Gaza the day-to-day liaison and coordination activity with COGAT is carried out by the Coordination and Liaison Administration (CLA), located on the Israeli side of the Erez crossing. CLA is the military unit responsible for the coordination of access to and from Gaza in connection with the facilitation of civilian and humanitarian needs. DSS at the time routinely liaised with COGAT through CLA.

565. From 27 December until 2 January DSS communicated with COGAT/CLA by telephone and by e-mail. The Mission is in possession of the names of the Israeli officers with whom such contact was established and maintained. In the second phase of the conflict, COGAT intervention increased and new personnel added to their capacity. Two new contacts were added to those already established.

566. The most comprehensive list of relevant data was forwarded to COGAT/CLA on 3 April 2008, including all United Nations installations. As of 29 December 2008 COGAT/CLA had been provided with an updated list of the coordinates of all United Nations offices, international residences and pre-identified possible emergency shelters. Throughout the military operations DSS was in almost daily communication, providing detailed information on coordinates of relevant emergency shelters and distributions centres. The Mission has been shown the relevant log of all such communications.

567. On the day in question DSS made at least seven phone calls to COGAT/CLA counterparts between 8.14 a.m. and 1.45 p.m. These conversations addressed, for instance, the proximity of

Israeli fire, the damage done to UNRWA installations, requests that fire be redirected or withdrawn, and coordination for the removal of fuel tankers.

568. Despite calls beginning at 8.14 a.m., it does not appear that COGAT/CLA was able to confirm that contact had been established with the relevant brigade until 11.06 a.m.

569. Other information available to the Mission shows that the Deputy Director of Operations of UNRWA, who was in Jerusalem at the time was engaged in frequent calls to senior Israeli officials. He had received a call at 9 a.m. from John Ging, the Director of Operations at UNRWA, advising him of the shelling near the compound and had been asked to demand that the shelling be stopped by calling the Israeli armed forces' Humanitarian Coordination Centre (HCC) in Tel Aviv. He made a total of 26 calls to the head of HCC or to his assistant as well as to members of COGAT/CLA. He was assured on a number of occasions by the head of HCC that shelling had stopped, but it was clear when he relayed this message back to Gaza that shelling was continuing. The Deputy Director had warned of the immediate risk to the fuel depot and those seeking shelter.

5. Weapons used

570. Analysis of the shells used in the strikes that hit the UNRWA compound indicates clearly that at least seven shells were white phosphorous shells, three of which were complete and four of which were very substantial components of the shells. Military experts indicate that in all probability these shells were fired from a 155 mm Howitzer.

571. Three other missiles were determined clearly by UNRWA military experts to have been high explosive missiles.

6. The Israeli response

572. On 15 January the Israeli Defence Minister, Ehud Barak, said the attack had been a "grave error" and apologized, according to the United Nations Secretary-General, who had spoken with him earlier in a meeting in Tel Aviv. The same day the Israeli Prime Minister said that it was "absolutely true that we were attacked from that place, but the consequences are very sad and we apologize for it". The Israeli Welfare and Social Services Minister made subsequent statements suggesting there had been gunfire directed at Israeli troops from adjacent premises. He said it was shrapnel from the return fire that entered the UNRWA compound causing the blaze.[367]

573. On 22 April the summary of the conclusions of the Israeli armed forces' investigations reported as follows:

> … the IDF deployed a smoke screen in order to protect a tank force operating in the neighbourhood from Hamas anti-tank crews who had positioned themselves adjacent to the UNRWA headquarters. The smoke screen was intended to block the terrorists' field of view. Information received by the IDF shows that the smoke screen did assist in protecting the force and prevented precise anti-tank fire against

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[367] http://www.jpost.com/servlet/Satellite?cid=1232292898771&pagename=JPArticle%2FShowFull.

IDF forces. The smoke projectiles were fired at an area a considerable distance from the UNRWA headquarters, and were not intended to cause damage to either person or property. However, it appears that fragments of the smoke projectiles did hit a warehouse located in the headquarters, causing it to catch fire.

During the incident, claims were also made that an explosive shell or shrapnel hit the UNRWA headquarters. The investigation showed that these were shells, or shell fragments that were fired at military targets within the battle zone.

The damage caused to the UNRWA headquarters during the fighting in the Tel El-Hawwa neighbourhood is the unfortunate result of the type of warfare that Hamas forced upon the IDF, involving combat in the Gaza Strip's urban spaces and adjacent to facilities associated with international organizations. These results could not be predicted.

Nevertheless, it is clear that the forces did not intend, at any stage, to hit a UN facility. Following UN complaints that an explosive shell had hit the headquarters, the forces were ordered to cease firing explosive shells in the region in question. Following the receipt of reports about the fire in the warehouse, all firing in the area was stopped. The entry of fire-fighting trucks to the area was coordinated with the IDF in order to assist in extinguishing the fire.[368]

574. In its report of July 2009 on the military operations, the Israeli Government explains that the "primary rationale" for firing white phosphorous was to "produce a smokescreen to protect Israeli forces from the Hamas anti-tank crews operating adjacent to the UNRWA headquarters". The report goes on to assert:

> The IDF sought to maintain a safety distance of several hundred metres from sensitive sites, including the UNRWA compound. Despite the maintenance of a safety distance, some felt wedges and other components of the projectiles apparently landed in the compound after the release of felt wedges in the air. The IDF neither anticipated not intended this outcome.[369]

575. The Mission has a number of observations about the conclusions of the Israeli Government. First, it does not share the circumspect or indeed understated representation of the nature and extent of the strikes in the compound. There were ten strikes: three high explosive shells landed and exploded in the compound; seven white phosphorous container shells discharged completely or very substantially in the confines of a very limited space around particularly vulnerable areas of the UNRWA compound. This is not a matter of a limited number of wedges falling inside the compound or shrapnel or parts of shells landing in the compound as the shells exploded elsewhere. It is important to emphasize that we are dealing with shells exploding or discharging inside the compound in areas where hazardous material was stored.

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[368] http://dover.idf.il/IDF/English/opcast/postop/press/2202.htm.

[369] "The operation in Gaza…", paras. 344 and 346.

576. Secondly, the claim that this result was neither intended nor anticipated has to be reviewed carefully. In the first place the Mission affirms the result to be reviewed is not fragments and wedges landing in the compound but ten shells landing and exploding inside the compound. It is difficult to accept that the consequences were not appreciated and foreseen by the Israeli armed forces.

577. Those in the Israeli army who deploy white phosphorous, or indeed any artillery shells, are expertly trained to factor in the relevant complexities of targeting, including wind force and the earth's curvature. They have to know the area they are firing at, possible obstacles in hitting the target and the other environmental factors necessary to ensure an effective strike. It is also clear that, having determined that it was necessary to establish a safety distance, the presence of the UNWRA installations was a factor present in the minds of those carrying out the shelling.

578. The question then becomes how specialists expertly trained in the complex issue of artillery deployment and aware of the presence of an extremely sensitive site can strike that site ten times while apparently trying to avoid it.

579. The Mission's scepticism that the result was not anticipated is confirmed by the fact that from around 8 a.m. on 15 January UNRWA officials began a series of calls to a number of officials explaining precisely what was going on. These calls were made to the appropriate people at COGAT/CLA as a result of prearranged coordination and further reinforced by the numerous calls by the Deputy Director of UNRWA to senior Israeli military officials in Tel Aviv.

580. In particular, the Israeli military officials were informed that shells had indeed struck inside the compound by the series of phone calls made by UNRWA officials.

581. The Mission is in possession of information that indicates a senior UNRWA official called the head of HCC in Tel Aviv and a number of his immediate subordinates several times. In particular a call was made at 10.31 a.m. by the official to the Israeli armed forces to explain that white phosphorous had landed in the compound and had set fire to the warehouse. He was told "by Tel Aviv" that the firing had stopped. To be clear, this means that by 10.30 a.m. at the latest channels of communication had been opened between Tel Aviv and those on the ground in Gaza City responsible for the firing of the shells, albeit not necessarily directly, but sufficient to be receiving reports of what was going on from Israeli troops on the ground.

582. At 10.30 a.m. staff at the UNRWA compound noted five white phosphorous container shells had discharged in the confines of the compound. At 10.40 a.m. the UNRWA official was again in direct communication with Tel Aviv explaining specifically that "the targeting is taking place in the vicinity of the workshop" and requiring that the Israeli armed forces desist immediately. In particular, he pointed out that what was required was a cessation of the firing for a sustained period of time to allow staff to bring the fire under control.

583. At 11.17 a.m. the same senior UNRWA official was informed in a phone call from UNRWA staff in the compound that a further two rounds had impacted "within the last ten minutes".

584. At 11.53 a.m., in a further telephone call, the senior UNRWA official indicated to the COGAT/CLA contact person that the firing had been unforgivable and unacceptable. He noted that efforts had been made since 09.30 a.m. to get the firing to stop and that UNRWA had been told in several calls that the firing had been ordered to be stopped at higher levels, yet it continued. The UNRWA official noted that it was incomprehensible that, with the amount of surveillance and geographic positioning system (GPS) information, the most vulnerable part of the compound had been repeatedly struck.

585. In all the circumstances the Mission rejects the Israeli armed forces' assertion to the effect that it was not anticipated that the shells would land in the compound. The Israeli armed forces were told what was happening. It no longer had to anticipate it. The Israeli armed forces' responses in Tel Aviv and in COGAT/CLA indicate quite clearly that they understood the nature and scale of what was happening. Their responses in particular indicate that orders had been given to stop the firing.

7. Factual and legal findings

586. The Mission considers that Israeli armed forces had all of the information necessary to appreciate the danger they were creating as a result of their firing at the UNRWA installations, in particular the fuel depot, and to the civilians gathered there. Orders were said to have been issued to cease firing in the vicinity of the UNWRA premises.

587. The Israeli Government's report cites with approval a passage from the report to the Prosecutor of the International Criminal Tribunal for the former Yugoslavia in relation to the bombing of the Federal Republic of Yugoslavia by the North Atlantic Treaty Organization (NATO) in 1998. The Mission has also considered that report. On the issue of intent it states:

> Attacks which are not directed against military objectives (particularly attacks directed against the civilian population) and attacks which cause disproportionate civilian casualties or civilian property damage may constitute the actus reus for the offence of unlawful attack under article 3 of the ICTY Statute. The mens rea for the offence is intention or recklessness, not simple negligence. In determining whether or not the mens rea requirement has been met, it should be borne in mind that commanders deciding on an attack have duties:
>
> (a) To do everything practicable to verify that the objectives to be attacked are military objectives;
>
> (b) To take all practicable precautions in the choice of methods and means of warfare with a view to avoiding or in any event to minimizing incidental civilian casualties or civilian property damage; and
>
> (c) To refrain from launching attacks which may be expected to cause disproportionate civilian casualties or civilian property damage.[370]

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[370] "Final report to the Prosecutor…", para. 28.

588. The Mission agrees that this passage correctly reflects both the nature of the intent required and the relevant duties of a commander.

589. Even if the Israeli armed forces were under fire from anti-tank missiles from Palestinian armed groups at the time, all of the information referred to above indicates that the commanders in question did not take all feasible precautions in the choice of methods and means of warfare with a view to avoiding or, in any event, to minimizing incidental civilian casualties or civilian property damage.

590. The Mission is not attempting to second-guess with hindsight the decisions of commanders. The fact is that the events in question continued over a period of some three hours. In these circumstances the Israeli armed forces were not confronted by surprise fire to which they had to respond with whatever materiel was available to them at the time. If they were faced with anti-tank missiles, that was hardly something of which they had been unaware for an appreciable time.

591. Statements made to the Mission by senior UNRWA international staff indicate that they were unaware of any sustained fire at the relevant time from anywhere in the nearby areas. The Mission notes that official statements made on 15 January by Israel's Prime Minister had indicated with complete certainty that firing by Palestinian armed groups had occurred from within the UNRWA compound.[371] This was later contradicted and corrected to state that the armed groups occupied positions near to but outside the compound.[372] The Mission considers it important to record that the initial allegation was incorrect and this appears now to be accepted as such by the Israeli.

592. The Mission concludes that the Israeli commanders knew of the location of the UNRWA premises and indeed of the layout of the compound in terms of the most vulnerable areas and especially the fuel depot before the shelling took place around 8 a.m.

593. Even if the Israeli Government's position regarding the position of Palestinian armed groups is taken at face value, the Mission concludes that, given the evident threat of substantial damage to several hundred civilian lives and to civilian property in using white phosphorous in that particular line of fire, the advantage gained from using white phosphorous to screen Israeli armed forces' tanks from anti-tank fire from armed opposition groups could not be deemed proportionate.

594. Having been fully alerted not to the risks but to the actual consequences of the course of action, Israeli armed forces continued with precisely the same conduct as a result of which further shells hit the compound. Such conduct, in the Mission's view, reflects a reckless disregard for the consequences of the choice of the means adopted in combating the anti-tank fire

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[371] Israel's Prime Minister, Ehud Olmert, told the United Nations Secretary-General that troops shelled the building in response to Hamas gunfire coming from within, but nonetheless said it should not have happened. Israeli troops "were attacked from there and the response was harsh", Olmert said. "It is absolutely true that we were attacked from that place, but the consequences are very sad and we apologize for it", he added. See http://www.guardian.co.uk/world/2009/jan/15/israel-gaza-offensive-truce-talks. The same quotation is reported in multiple sources.

[372] "The operation in Gaza…", para. 347.

the Israeli authorities claim they were facing. The decision to continue using the same means in the face of such knowledge compounds that recklessness. It deprived the UNRWA staff of the ability to contain the fires that had been caused and led to millions of dollars worth of damage that could have been avoided. It also put in danger some 700 lives, including staff and sheltering civilians.

595. The Mission, therefore, concludes on the basis of the information it received and in the absence of any credible refuting evidence that Israeli armed forces violated the customary international law requirement to take all feasible precautions in the choice of means and method of attack with a view to avoiding and in any event minimizing incidental loss of civilian life, injury to civilians and damage to civilian objects as reflected in article 57 (2) (a) (ii) of Additional Protocol I to the Geneva Conventions.

C. Al-Quds hospital, Tal el-Hawa, Gaza City

596. Al-Quds hospital belongs to the Palestinian Red Crescent Society (PRCS). It consists of three buildings facing west towards the sea and occupying the corner of Jami'at ad-Duwal al-Arabiyah Street and al-Abraj Street in the area of Tal el-Hawa. The building nearest the corner is seven storeys high. Its principal purposes were administrative and cultural rather than medical. It stored a huge quantity of PRCS archives. The middle building contains the accident and emergency treatment area as well as other offices. The building furthest from the corner is the main medical building with operating theatres in the basement. About 200 metres eastwards on al-Abraj Street is the Palestinian Red Crescent ambulance depot. These buildings all suffered significant damage in the course of an Israeli bombardment on 15 January 2009, which included the use of white phosphorous. The attacks endangered the lives of the staff and more than 50 patients in the hospital. There was no warning given for any of the attacks.

597. The Mission met staff from the hospital on six separate occasions, three of them on site visits. Two extended site visits included inspections not only of the hospital premises, but also of the ambulance depot, of the damage done to apartment buildings on that street and of the area opposite the hospital to assess the damage done by fighting in that area. Three long interviews were carried out with one doctor individually, another was carried out with two doctors together and there were two group meetings with four and five doctors, respectively. The Mission also received a considerable body of photographs and digital video footage of the events of the day in question. It furthermore addressed questions to the Government of Israel regarding the use of white phosphorous munitions against al-Quds hospital and the direct military advantage pursued by their use under the circumstances, but received no reply.

598. The doctors with whom the Mission spoke all occupied senior positions but also witnessed the events that occurred throughout that day. The Mission was impressed with their objectivity and the genuine distress several of them showed at being unable to help or protect the sick and wounded who had come to the hospital. Throughout that day many of the staff, including the doctors, took exceptional risks to stop fire spreading, including by removing white phosphorous wedges from near diesel tanks. One doctor in particular showed remarkable courage. He left the hospital to drive an ambulance through artillery shelling as he sought to bring an eight-year-old girl to al-Shifa hospital for treatment which he was no longer able to provide in al-Quds. Having taken the girl there, he drove back to the hospital in the same conditions to continue assisting the efforts to fight the fires.

1. The facts

599. When the Israeli air offensive began on 27 December a government building opposite the al-Quds administrative building on al-Abraj Street was almost totally destroyed. The building had previously served as a criminal detention centre and is still referred to locally by that designation although it had recently been used for other purposes, including customs administration. The same building was reportedly struck on a number of other occasions after 27 December. When the Mission visited in June 2009, the site was completely demolished.

600. Diagonally opposite al-Quds Hospital on Jami'at ad-Duwal al-Arabiyah Street was another building rented to the Government and used primarily for public registry functions. Today only the ground floor of the building remains. Witnesses indicate that the upper floors had been destroyed, probably by artillery fire, around 6 and 7 January.

601. Three senior doctors at the hospital and two residents from al-Abraj Street indicated that at some point between 3 and 6 January several tanks were stationed several hundred metres east of al-Quds hospital, visible from the ambulance depot. Throughout the days of 5, 6, 7 and 8 January there was significant artillery fire on a number of civilian apartment buildings on al-Abraj Street. On 8 January 2009 the seventh-floor apartment of Dr. Jaber Abu al-Naja was struck. His wife and son-in-law were killed immediately as they sat on the balcony of the apartment eating pastries. His wife was cut in half by the explosion and his son-in-law was thrown from the balcony on to the street below. His daughter, Ihsan, was seriously injured and taken to al-Quds hospital for treatment. Dr. Jaber Abu al-Naja is the former Ambassador of the PLO to Senegal and a well-known Fatah politician.[373]

602. By 15 January the area immediately to the south of al-Quds hospital (the customs building and the registry building) had been totally or very substantially destroyed. The area to the east on al-Abraj Street had been significantly attacked by artillery fire.

603. By this time a large number of civilians (several hundreds) had also gathered in the hospital buildings seeking safety.

604. During the night of 14 January Israeli armed forces began an extended barrage of artillery fire over the area. It continued into the morning of 15 January. Between 8 and 9 a.m. doctors in the main building were in the principal meeting room when shells landed on either side of the building. They saw white phosphorous wedges burning near a container of diesel and efforts were successfully made to move those away. The initial explosions had blown out the office windows. At about the same time it became apparent that the administrative building on the corner had also been hit. The hospital building next to it has a large timber-built component. The risk of fire spreading was immense and a witness described how hospital staff, including senior doctors, all sought to break, by hand, the wooden bridge way that linked the administrative building to the hospital building to prevent the fire from spreading.

605. Shortly after the initial explosions and fire were observed, a tank shell directly penetrated the rear of the middle hospital building. That part of the building is made of corrugated iron and

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[373] Interview with Dr. Jaber Abu al-Naja, 4 July 2009.

the entry point of the shell is easily detectable. The shell then penetrated the inner concrete wall of the hospital where the pharmacy was located. The pharmacy was completely destroyed as a result. An eyewitness described that, through the holes made in the corrugated iron, he observed a tank on a road between two buildings about 400 metres eastwards. Although he could not say whether it was this tank that had struck the hospital directly, it was in a direct line in relation to the entry point of the shell.

606. Throughout the day the hospital was unable to procure the assistance of civil defence forces or other fire-fighting support. As a result, the staff of the hospital were almost entirely consumed with the task of saving the buildings and ensuring the safety of patients.

607. It was not until around 4 p.m. that it was possible to coordinate an evacuation of hospital patients with the assistance of ICRC, which made clear upon arrival that it would be able to carry out this procedure only once. Those not evacuated at this point were relocated to the operating theatres of the hospital.

608. At around 8 p.m. another fire broke out causing serious damage to the main hospital building. As a result of this fire it was decided to carry out a total evacuation of the remaining patients as well as a number of local residents who had sought refuge in the hospital. It was at this stage that one of the senior doctors took an eight-year-old girl who had been struck by a bullet in the jaw and was critically ill to al-Shifa hospital, where she later died. At that point he says he felt that there was very heavy fire in the area and that there appeared to be some attempts to aim directly at or near to the ambulance.

609. Meanwhile, 200 metres to the east in al-Abraj Street the PRCS ambulance depot had also been severely damaged. One of its principal buildings was entirely destroyed. The Mission also saw the remnants of three PRCS ambulances that had been parked at the entrance to the depot. Two had been crushed by tanks but not burned out. The other ambulance showed signs of having been struck directly in the front below the windscreen by a missile of some description and having been burned out.

610. The devastation caused to both the hospital buildings, including the loss of all archives in the administrative building, and the ambulance depot was immense, as was the risk to the safety of the patients.

611. The Mission examined a number of the shells retrieved by the hospital staff and reviewed footage taken at the time as well as still photographs.

2. The Israeli position

612. The Israeli authorities did not specifically mention the incident at al-Quds hospital in the conclusions of their investigations on 22 April 2009.[374]

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[374] Annex B addresses some allegations regarding the use of ambulances, but not the attack on the hospital. See http://dover.idf.il/IDF/English/Press+Releases/09/4/2202.htm.

613. In its report of July 2009 (para. 173) the Israeli Government quotes part of an article from *Newsweek* magazine:

> One of the most notorious incidents during the war was the Jan. 15 shelling of the Palestinian Red Crescent Society buildings in the downtown Tal-al Hawa part of Gaza City, followed by a shell hitting their Al Quds Hospital next door; the subsequent fire forced all 500 patients to be evacuated. Asked if there were any militants firing from the hospital or the Red Crescent buildings, hospital director general Dr. Khalid Judah chose his words carefully. 'I am not able to say if anyone was using the PRCS buildings [the two Palestine Red Crescent Society buildings adjacent to the hospital], but I know for a fact that no one was using the hospital.' In the Tal-al Hawa neighborhood nearby, however, Talal Safadi, an official in the leftist Palestinian People's Party, said that resistance fighters were firing from positions all around the hospital. He shrugged that off, having a bigger beef with Hamas. 'They failed to win the battle.' Or as his fellow PPP official, Walid al Awad, put it: 'It was a mistake to give Israel the excuse to come in.'[375]

While the Israeli Government does not comment further on the specific attack, it would appear to invoke these comments to justify the strikes on the hospital and surrounding area.

614. The Mission understands that the Israeli Government may consider relying on journalists' reporting as likely to be treated as more impartial than reliance on its own intelligence information. The Mission is nonetheless struck by the lack of any suggestion in Israel's report of July 2009 that there were members of armed groups present in the hospital at the time.

3. Factual findings

615. The Mission finds that on the morning of 15 January the hospital building and the administrative building were struck by a number of shells containing white phosphorous and by at least one high explosive shell. The fires these caused led to panic and chaos among the sick and wounded, necessitated two evacuations in extremely perilous conditions, caused huge financial losses as a result of the damage and put the lives of several hundred civilians including medical staff at very great risk.

616. The Mission also notes that, as a result of the conditions the attack created, the hospital was unable to provide the necessary care for an eight-year-old girl. Despite heroic attempts to save her, she died later in another hospital. The girl had been shot by an Israeli sniper. The Mission finds the Israeli armed forces responsible for her death.

617. On the issue of armed groups being present in the hospital buildings, the Mission does not agree that anything in the extract cited above from *Newsweek* magazine justifies the conclusion that the hospital premises were being used by armed groups. The fact that Dr. Judah spoke with certainty about matters within his knowledge cannot be presumed to mean that he believed other

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[375] "Hamas and its discontents", 20 January 2009.

parts of the hospital premises were being used by armed groups. That may be journalistic gloss and is tantamount to putting words in the mouth of Dr. Judah. The comments attributed to Mr. Safadi that "resistance fighters were firing from positions all around the hospital" can mean either that people were inside the hospital firing or were in positions outside but near to the hospital. The journalist did not clarify precisely what was meant.

618. The Mission, having carried out over eight hours of interviews with senior and junior staff, and having sought to verify the matter with others, including journalists who were in the area at that time, has concluded that it is unlikely there was any armed presence in any of the hospital buildings at the time of the attack.

619. The Mission finds that no warning was given at any point of an imminent strike and at no time has the Israeli Government suggested such a warning was given.[376]

620. Reviewing the scene at the time of the strikes on al-Quds hospital, it is important to bear in mind that a great deal of destruction had already occurred and that buildings with an apparent connection to the local government had been attacked and largely destroyed. As such, Israeli tanks had a relatively clear view of the area immediately to the south of the hospital. The Mission also notes that as a result of the attacks on al-Abraj Street by tanks for several days, the scope for resistance, if any, from that particular quarter had been significantly reduced.

621. The Mission is aware of reports that there was significant resistance from Palestinian armed groups in the Tal el-Hawa area on the night of 14January.[377] Information available alleges that on the night of 14 January Israeli troops had entered buildings on al-Abraj Street, used human shields to check if there was any presence of enemy combatants or explosive devices and found none. Reports do not specify the nature, scale or precise location of resistance in Tal el-Hawa. The Mission notes that in the buildings directly opposite al-Quds hospital on Jami'at ad-Duwal al-Arabiyah Street there is very little sign of damage to any of the buildings on that side of the street, and certainly nothing that compares to the damage to the buildings on al-Abraj Street.

622. The Mission takes into account the damage that had already occurred between 27 December and 8 January on al-Abraj and Jami'at ad-Duwal al-Arabiyah Streets, and the lack of apparent damage to the buildings directly opposite the hospital on Jami'at ad-Duwal al-Arabiyah Street. It also takes account of the sighting of at least one tank whose direct line of fire, bearing in mind that it was surrounded by tall buildings on both sides, was the hospital itself. It also notes the credible sightings of Israeli aircraft in the area at various points throughout the day. It further notes the extensive damage to the ambulance depot at the same time as the strikes

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[376] In its conclusions of its investigations published on 22 April, the Israeli armed forces highlight the fact, in connection with its investigation into allegations of attacks on medical services, that they gave warnings. One related to an ambulance and another to a clinic. There is no mention of al-Quds hospital. See http://dover.idf.il/IDF/English/Press+Releases/09/4/2202.htm.

[377] The Mission has noted a witness account in relation to Israeli armed forces' use of human shields on al-Abraj Street on the night of 14 January, thus indicating that there was indeed a very active Israeli presence on the ground. See Al Mezan Center for Human Rights, "Hiding behind civilians: April 2009 update report", p. 8.

on the hospital occurred and the apparently unexplainable crushing of ambulances parked outside the depot.

623. In the light of all these considerations, the Mission finds that there are reasonable grounds to believe that the hospital and the ambulance depot, as well as the ambulances themselves, were the object of a direct attack by the Israeli armed forces in the area at the time and that the hospital could not be described in any respect at that time as a military objective.

4. Legal findings

624. Article 18 of the Fourth Geneva Convention provides that civilian hospitals may in no circumstances be the object of attack but shall at all times be respected and protected by the parties to the conflict.

625. Article 19 provides that the protection to which civilian hospitals are entitled shall cease "only after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded."

626. Even in the unlikely event that there was any armed group present on hospital premises, there is no suggestion even by the Israeli authorities that a warning was given to the hospital of an intention to strike it. As such the Mission finds on the information before it that Israeli armed forces violated articles 18 and 19 of the Fourth Geneva Convention.

627. On considering the information before it, the Mission takes the view that there was intent to strike the hospital, as evidenced in particular by the high explosive artillery shell that penetrated the rear of the hospital and destroyed the pharmacy.

628. Even if it is suggested that there was no intent to directly strike the hospital but that Palestinian armed groups had taken up positions near al-Quds hospital, the Israeli armed forces would still have been bound to ensure that risk of death, injury or damage to the people in the hospital or the hospital itself would not be excessive in relation to the military advantage anticipated in attacking the hospital.

629. Taking into account the weapons used, and in particular the use of white phosphorous in and around a hospital that the Israeli armed forces knew was not only dealing with scores of injured and wounded but also giving shelter to several hundred civilians, the Mission finds, based on all the information available to it, that in directly striking the hospital and the ambulance depot the Israeli armed forces in these circumstances violated article 18 of the Fourth Geneva Convention and violated customary international law in relation to proportionality.

D. Attacks on al-Wafa hospital, 5 and 16 January 2009

630. The Mission interviewed three senior doctors of al-Wafa hospital. One was Dr. Khamis el-Essi, its Director. The two other doctors do not wish to be identified. The Mission has also reviewed information in the public domain in relation to the various alleged attacks on the hospital.

631. Al-Wafa hospital is located at the eastern part of al-Shujaeiyah (east Gaza City), very close to the Israel-Gaza eastern border. It was founded in 1996 and provides long-term care to

those suffering from head and spinal injuries. Many patients are elderly. It can accommodate over 50 patients.

632. The hospital consists of three buildings. From south to north these are the administrative building (three floors), the hospital buildings (rooms of patients and surgeries, seven floors) and the building for the elderly (reception and rehabilitation, three floors).

1. The facts

633. The hospital was the object of a significant attack on 16 April 2008. Tanks fired in and around the hospital area, damaging a large number of patient rooms and causing significant destruction of the building for rehabilitative care for the elderly. Hospital staff indicate there was no armed presence inside the hospital at that time but cannot say whether there may have been a presence outside.

634. During the military operations, the hospital was attacked again. Despite media reports that a warning had been given, hospital staff deny that any specific warning was received. Leaflets had been dropped in the area with general indications that support of Hamas would be punished. The hospital had also received a number of telephone warnings with recorded messages but with no specific indication that the hospital itself would be the object of an attack, much less with an indication of when that would occur. One doctor indicated that the hospital had received around four such messages each day since 27 December 2008.

635. On 5 January, the hospital was attacked with intensive artillery fire, including white phosphorous shells. Senior doctors indicate that generic recorded telephone warnings were actually received during the shelling. The latest warning the hospital received on 5 January was at 4.30 p.m. Following this, at around 12.30-1 a.m. on 6 January, white phosphorous shells landed in the area surrounding the administrative building and on its roof.

636. The white phosphorous caused damage to the administrative building only, destroying the roof.

637. All three witnesses of the senior medical staff confirm absolutely that there was no presence of any armed resistance inside the hospital. They are not able to confirm or deny the presence of such elements outside of the hospital.

638. The hospital was attacked again with artillery fire on 16 January 2009 at 2 a.m. No specific warning was given. Again a general recorded message had been received saying that people located in the border areas should leave and threatening punitive measures to those who stayed. Again doctors confirm there was no armed presence inside the hospital but cannot say what was occurring outside it.

639. The attack damaged the building for elderly patients on the ground and third floors as well as the roof. It damaged the third and fourth floors of the central hospital building.

640. Doctors estimate that the tanks were as close as 70 metres from the hospital.

641. The damage to the hospital (as a result of the two attacks) is estimated at US$ 550,000.

642. As to why the hospital was the subject of these attacks, doctors speculate that its location close to the border is one possible reason. Another relates to the rumour that Israel believes that Muhammad al-Deif, a well-known Hamas militant, is treated inside the hospital.

643. According to one witness in the hospital, Israeli armed forces tried to assassinate Mr. al-Deif on 12 July 2006. Although he survived the assassination attempt, he was badly hurt and, according to some rumours, his legs were amputated and he became blind. It seems that Israel believes that he receives some rehabilitation and medical treatment at al-Wafa hospital.

644. On 5 February 2003, for instance, Israeli snipers shot and killed two staff nurses who were on duty inside the hospital (Abd al-Karim Lubad and Omar Hassan, both aged 21).[378]

2. Factual findings

645. The Mission notes that the three witnesses interviewed are senior doctors in the hospital. The Mission found them to be credible and reliable. They clarified a number of apparently inaccurate statements that have appeared in press reports, especially regarding the nature of the warnings given.

646. The Mission considers that the warnings given cannot be considered as a warning within the meaning of article 19 of the Fourth Geneva Convention. It was not specific and no indication was given about when the attack would take place or how much time there was to evacuate the hospital.

647. As to the reasons for the multiple attacks on the hospital in 2003, 2008 and 2009, the Mission is not in a position to comment.

3. Legal findings

648. The Mission finds that the choice of deploying white phosphorous shells in and around such a building, where patients receiving long-term care and suffering from particularly serious injuries were especially vulnerable, was not acceptable in the circumstances. The Mission is particularly concerned about the attack on the hospital on 16 January from such close proximity. Even if there was some degree of armed resistance in the area (which the Mission cannot confirm), commanders in deploying such weaponry must take into account all the facts and circumstances.

649. The Mission considers the use of white phosphorous in such an area as reckless and not justifiable in relation to any military advantage sought in the particular circumstances.

650. The Mission considers that the general protection given to hospitals indicates the need for particular consideration to be given to the use of such especially hazardous materials. The failure to provide sufficient warning indicates in the Mission's view a wilful failure to consider seriously the consequences of using such weapons in those circumstances.

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[378] See http://www.hrea.org/lists/hr-health-professionals/markup/msg00099.html.

651. The Mission notes that the case of al-Wafa hospital demonstrates the complete ineffectiveness of certain kinds of warnings. The information the Mission has received points towards a kind of repetition and routine warning system taking no account at all of the realities of the hospital.

652. As such the Mission considers that, from all the information available to it, the Israeli armed forces violated articles 18 and 19 of the Fourth Geneva Convention as well as customary international law as reflected in Additional Protocol I, articles 57 (2) (b) and (c).

X. INDISCRIMINATE ATTACKS BY ISRAELI ARMED FORCES RESULTING IN THE LOSS OF LIFE AND INJURY TO CIVILIANS

A. The shelling in al-Fakhura Street by Israeli armed forces

653. In the afternoon of 6 January at least four mortar bombs fired by Israeli armed forces exploded near the al-Fakhura junction in the al-Fakhura area of the Jabaliyah camp in northern Gaza.[379]

654. The Mission interviewed Mr. Muhammed Fouad Abu Askar on three occasions. His brother and two sons were killed in the attack.[380] It also met surviving members of the al-Deeb family on two occasions.[381] The Mission interviewed four men who had lost family members in the attack, the Director of the UNRWA premises that were being used as a shelter for civilians and a number of journalists who covered the story. In addition, the Mission has seen a number of statements provided to organizations in Gaza in the form of affidavits. The Mission has also considered to the degree possible the information available from Israeli sources on the circumstances of the strike.

B. The facts surrounding the Israeli armed forces' mortar shelling

655. On 5 January 2009 UNRWA had opened the elementary school on al-Fakhura Street to provide shelter to civilians fleeing the areas where the Israeli armed forces had entered.

656. The Mission spoke on two occasions with the Director of the shelter about its management. He said that about 90 per cent of those in the shelter had come from outside of Jabaliyah camp, largely from the al-Atatra area. He explained that the shelter was guarded by

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[379] Interviewees' statements vary, asserting between four and six shells landed. The Mission saw for itself what it assessed to be the effects of mortars that landed. The crater in the orchard beside the al-Deeb house may have been caused by a mortar, but given the nature of the surroundings it is less easy to tell in terms of shrapnel patterns. The Mission does not reject the possibility that more landed but was not able to inspect those sites or to come to a firm view confirming the additional shells.

[380] Mr. Abu Askar is a Hamas member. He also provided testimony at the public hearings in Gaza. He was detained on the charge of being a member of Hamas in 1992. He is the Director-General for Religious Affairs (a voluntary position) and is on the Dialogue Committee, organizing the pilgrimage to Mecca (Saudi Arabia). He is in charge of the Hamas Follow-Up Committee in North Gaza related to the settlement of disputes between Hamas and other groups in the Occupied Palestinian Territory. He has a master's degree in education and is currently pursuing a PhD in the Syrian Arab Republic. He denies any involvement in armed militant activities.

[381] Two of the members of the family also presented their testimony at the public hearings in Gaza.

security staff at its entry points and that all people coming in were registered by name and searched to ensure no weapons were being taken into the premises.

657. UNRWA has confirmed to the Mission that the Israeli armed forces were fully aware that the school was being used as a shelter from 5 January 2005. UNRWA materials indicate that there were 1,368 people in the shelter at the time.

658. About 16 hours prior to the shelling on the afternoon of 6 January 2009, Israeli armed forces had already carried out at least one strike, destroying the house of Mr. Abu Askar. At around 1.45 a.m. on 6 January 2009, Mr. Abu Askar received a personal telephone call from the Israeli armed forces advising him that he should evacuate the house and everyone in it because it was going to be destroyed by an air strike. The building housed not only his immediate family but a large number of his extended family, about 40 in all. Mr. Abu Askar responded quickly, evacuating not only his own extended family but also advising neighbours of the imminent strike. The survivors of the al-Deeb family confirm they were advised at this time by Mr. Abu Askar of the call he had received.

659. The house was struck by a missile from an F-16 according to Mr. Abu Askar about seven minutes after the call was received. Several hours later, at around 6 a.m., he returned to the site of the house with members of his family hoping to retrieve some items of furniture. There he noticed that a number of other houses in the area also appeared to have been hit at some time in the intervening four hours. In the course of that day Mr. Abu Askar and members of his family took various steps to prepare the move of the family to rented accommodation nearby.

660. Mr. Abu Askar was in the street at around 4 p.m., when several mortars landed. He believes that there were about 150 people in the street at the time. The Director of the shelter confirmed that the street outside the school was generally busy. It had become busier than usual due to the large influx of people into the school looking for shelter. Some relatives were coming to the school to visit those who had recently arrived and new people were arriving to seek shelter, including with belongings on donkey carts.

661. Witnesses indicate that all of the explosions were over within around two minutes. One shell landed directly in the courtyard outside the al-Deeb house, where most of the family was gathered. Surviving family members interviewed by the Mission explained that nine members of the family were killed immediately. Ziyad Samir al-Deeb lost both legs as a result of the blast.[382] Surviving family members and neighbours carried the dead and injured one after another to hospital. Ambulances came, but most casualties were transported in private cars. Alaa Deeb, a daughter of Mo'in Deeb, was taken to al-Shifa hospital and thereafter to Egypt, where she died of her injuries. In total, 11 members of the family died, including four women and four girls.

662. Apart from the shell that landed in the al-Deeb courtyard, three other shells landed in the street outside. The total spread of the four mortars was a little over 100 metres. The Mission cannot specify in which order the mortars fell, but proceeding southwards from the al-Deeb house along al-Fakhura Street, the Mission saw the impact of another mortar, 45 metres away, a third was seen a further 50 metres south and a fourth a further 10 metres south.

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[382] Ziyad al-Deeb testified before the Mission at the public hearings in Gaza along with his uncle.

663. The three other shells that the Mission could identify as having landed at different places on al-Fakhura Street killed at least 24 people. The witnesses estimate that up to another 40 were injured by the blasts.[383] The Mission has not been able to verify those figures, but having inspected the site and viewed the footage, it does not consider these numbers to be exaggerated.

664. Among those killed immediately were two sons of Mr. Abu Askar, Imad, aged 13, and Khaled Abu Askar, aged 19. Mr. Abu Askar's brother Arafat was also killed.

665. The Director of the UNRWA school shelter confirmed to the Mission that the blasts had damaged the part of the school building facing onto al-Fakhura Street. Up to nine people were injured. One boy of 16, who was sheltering in the school but was in the street at the time, was killed. No one inside the school was killed. He confirmed that no shell had directly hit the United Nations premises either inside or outside.

666. Witnesses have described the scene of chaos and carnage caused by the bombs. They indicate that people were ferried to hospitals in private cars because of the difficulties in reaching ambulance services at the time, although some ambulances did arrive.

C. The Israeli position

667. Contradictory accounts emerge from official Israeli statements. The initial position accepted that Israeli forces had struck inside the UNRWA school, claiming to be in response to Hamas fire. A later response accepted that Hamas had not been in the UNRWA school but had allegedly fired from 80 metres away from the school. Finally, the Israeli Government claimed that in fact Hamas operatives were launching mortars at Israeli armed forces for around one hour, firing every few minutes until the Israeli armed forces identified them and returned fire, killing a number of them.

668. On 6 January the Israeli armed forces posted the following statement on their website:

> An initial inquiry by forces on operating in the area of the incident indicates that a number of mortar shells were fired at IDF forces from within the Jebaliya school. In response to the incoming enemy fire, the forces returned mortar fire to the source.
>
> This is not the first time that Hamas has fired mortars and rockets from schools, in such a way deliberately using civilians as human shields in their acts of terror against Israel. This was already proven several months ago by footage from an unmanned plane showing rockets and mortars being fired from the yard of an UNRWA school.
>
> Again, we emphasize that this announcement is based on an initial inquiry.
>
> After an investigation that took place over the past hour it has been found that among the dead at the Jebaliya school were Hamas terror operatives and a mortar

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[383] A number of reports put the total figure of deaths at 42 or 43, including the al-Deeb family deaths. The Mission has not been able to contact all the relatives of those reported to have died.

> battery squad who were firing on IDF forces in the area. Hamas operatives Immad Abu Iskar and Hassan Abu Iskar were among terrorists identified killed.[384]

669. Further statements from spokespersons for the Prime Minister,[385] the Foreign Ministry and the Israeli armed forces all adhered to the position set out in the statement cited above. In two interviews the Prime Minister's spokesman, Mr. Regev, emphasized that he considered Hamas were mounting a cover-up in relation to the fact the senior operatives had been killed by the Israeli armed forces in its strike and in particular that two persons, Imad and Hassan Abu Askar, were "well-known members of the Hamas military machine – part of the rocket network".[386]

670. The position set out on 6 January was repeated again in comments to the press on 12 January by an Israeli armed forces' spokesman.[387]

671. On 15 and 19 February 2009 *The Jerusalem Post* published reports quoting Colonel Moshe Levi of CLA. He indicated that the stories of 40 or more dying as a result of the attack were the result of distortions and that in fact the Israeli armed forces had killed 12 people, including nine Hamas operatives and three non-combatants. The report of 19 February lists 7 of the 12 he said were killed. He also pointed out that the Israeli surveillance footage showed only a "few stretchers were brought in to evacuate people".

672. On 22 April 2009 the Israeli armed forces published the results of their preliminary investigations, stating a completely different position from that previously expressed:

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[384] http://www.mfa.gov.il/MFA/Government/Communiques/2009/Initial_inquiry_school_incident_6-Jan-2009.htm.

[385] On 7 January in a television interview on the British Broadcasting Corporation's programme Newsnight, Mr. Regev indicated that he believed that the Israeli armed forces had attacked the school because they had come under fire, that the school was occupied by Hamas operatives and that those Hamas operatives had committed a war crime by using the premises for the purpose of launching mortars. See http://www.youtube.com/watch?gl=GB&hl=en-GB&v=9wv0giW1elo&feature=PlayList&p=9277810AA376DF8D&playnext=1&index=5.

In another interview he indicated the Israeli armed forces' patrol returned fire having received mortar fire, that he assumed the school had been taken by force by Hamas "with guns" and held the people in the school as "hostages". See https://www.csidonline.org/resources/news/9/462-strike-on-gaza-school-kills-40?tmpl=component&print=1&page.

On the same day Major Avital Leibovich, spokeswoman of the Israeli armed forces, in an interview with Channel 4 news said that Hamas had fired from "the vicinity of the school" but later asserted that the two Hamas militants were inside the school firing at the Israeli armed forces. See http://link.brightcove.com/services/player/bcpid1184614595?bctid=6539745001

On the same day Israeli armed forces' spokesman Captain Benjamin Rutland made a presentation posted on YouTube. He indicated that it had transpired later that the mortar fire had come from within a United Nations school, that this was a crime on the part of Hamas and that civilians had been killed. He noted, however, that Hamas terror operatives had been killed including the well-known Abu Askar brothers. Another Israeli armed forces spokesperson confirmed on 12 January that it was adhering to the same positions as had been expressed on 6 and 7 January. See http://dover.idf.il/IDF/English/News/today/09/4/2201.htm.

[386] See https://www.csidonline.org/resources/news/9/462-strike-on-gaza-school-kills-40?tmpl=component&print=1&page

[387] The statement of Captain Ishai David in The Jerusalem Post on 12 January 2009.

> Regarding the UNRWA school in Jabaliya, the Fahoura school, the investigation concluded that the IDF used minimal and proportionate retaliatory fire, using the most precise weapons available to them. Hamas made this necessary, as it fired mortar shells at Israeli forces 80 metres from the school. Additionally, it was concluded that all of the shells fired by IDF forces landed outside of the school grounds.[388]

673. In July 2009 the Israeli Government stated:

> Soon after the source of fire was detected, a scouting unit was dispatched to confirm the location. Approximately 50 minutes after the mortar attack had begun, two independent sources cross-verified the location of the mortars. Only subsequent to this, and after verification of a safety margin of at least 50 metres between the target (i.e. the identified source of the mortar fire) and the UNRWA school, did the force respond to the ongoing barrage, by using the most accurate weapon available to it – 120-mm mortars.[389]

D. Other reports

674. The Mission carried out nine interviews with people who were present in al-Fakhura Street, in the al-Deeb yard or in the UNRWA school. No witness stated that he had heard any firing prior to the Israeli armed forces' mortars landing. On the other hand, the Mission is aware of at least two reports that indicate local residents had heard such fire in the area.[390]

675. The Mission notes that the statement of the Israeli armed forces on 22 April did not indicate where the Hamas fire came from, only stating it was 80 metres away. The Mission finds it difficult to understand how the Israeli armed forces could have come to this view without having the information at the same time that Hamas operatives had been firing mortars for almost one hour. It regards these new allegations as lacking credibility. However, the Mission accepts, for the purposes of this report, that some firing may have occurred that gave rise to the Israeli armed forces' response.

676. It seems clear to the Mission that Israel's Government developed a position justifying the striking of an UNRWA school as a result of the immediate outcry generated by initial erroneous reports that the school had been hit. That effort included a number of statements, in particular those by Mr. Regev and Major Leibovich, which turned out to be erroneous.

677. The Mission notes the comment of Colonel Moshe Levi in *The Jerusalem Post* on 15 February 2009 casting doubt on the numbers of dead noting that Israeli surveillance saw only

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[388] http://dover.idf.il/IDF/English/News/today/09/4/2201.htm.

[389] "The operation in Gaza…", para. 338.

[390] One report comes from the Associated Press, whose sources insisted on anonymity. The other is by a correspondent of the British Channel 4 News programme who reports that locals told him "militants had been firing rockets" at the Israeli armed forces and were running down the street to get away. See Jonathan Miller, "Why UN 'reversal' over Gaza school should be treated with caution". Channel 4, 5 February 2009, available at: http://www.channel4.com/news/articles/world/middle_east/why+un+reversal+over+gaza+school+should+be+treated+with+caution/2924657.

a few stretchers being used to lift the dead and injured. If Israel had that capacity of surveillance in the immediate aftermath of the shelling, it must have been able to see that the shells had hit on the street outside the school and not inside the school. Furthermore, if such surveillance was recorded, in the face of serious allegations levelled against the Israeli armed forces by several sources after the military operation in Gaza, the Government could have made this footage public in order to establish the truth of its claims regarding this incident.

678. Finally, the Mission comes to the repeated assertion of the Israeli authorities as to the identities of those killed in the strikes. The most detailed attempt to name these come in Col. Levi's statement of the 12 dead, including nine militants and three non-combatants. On 19 February *The Jerusalem Post* published seven of the names given to them by CLA. The Mission notes that CLA did not provide any information to explain where the information on the dead came from. None of the seven names corresponds with any the Mission has so far established died in the attack.

679. The position assumed by Colonel Levi of CLA is problematic in the light of the relatively uncomplicated case of the al-Deeb family, of whom nine members died immediately and two died later. Four of these were women and four were children. Given these figures alone, and the relative ease with which the victims could be identified, the Mission considers the CLA assertions as to the total numbers and identities of those killed in the Israeli armed forces' mortar strikes to be unreliable. Even if the Israeli authorities were to be correct in saying that nine combatants were killed, they are, in the considered view of the Mission, incorrect in stating that only three non-combatants were killed.

680. A further assertion made several times by Israeli spokespersons on 6 and 7 January and confirmed again on 12 January was that the strikes had not only managed to hit the militant rocket launchers but had also killed two senior Hamas militants, namely Imad Abu Askar and Hassan Abu Askar.[391] Again, for the most part these early assertions indicated that both had been killed in the UNRWA school. It is noticeable that the Israeli armed forces' summary of their own preliminary investigations does not repeat this claim.

681. What is now clear is that, if any Hamas operatives were killed by the Israeli strike, they were not killed in the school premises. It is difficult for the Mission to understand how the Israeli authorities could establish with such certainty within a matter of hours the identities of two of the Hamas operatives it had killed but could not establish within a week that the alleged firing had not come from the school and that the Israeli armed forces had not hit the school.

682. The Mission is satisfied that three Abu Askar family members were killed: Imad, aged 13, his brother Khaled, aged 19, and their uncle, Arafat, aged 33. Mr. Mark Regev indicated that Imad Abu Askar was a well-known member of Hamas's militant operation and of some significance in the rocket-launching operations. Major Leibovich and Captain Rutland also named Imad as one of the two operatives killed.

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[391] In her interview with Channel 4 News, Major Leibovich in fact appears to say "Amr Abu Askar" after some hesitation but in the light of the other statements the Mission considers this to have been an error on her part and that in all likelihood she intended to say "Imad".

683. The Mission does not deny the possibility of children being recruited by Palestinian armed groups. However, in the case of Imad Abu Askar, the Mission is satisfied that he was not a Hamas operative. Apart from his father's vehement and, in the Mission's view, credible rejection of any such claim, two other factors appear relevant. Firstly, since it has become clear that Imad was a 13-year-old boy it is noticeable that Israel has not commented further on the allegation of his alleged Hamas activity in general or the allegation in particular that on the day in question he had launched mortars at Israel.

684. Secondly, the Israeli armed forces directly called Mr. Abu Askar early in the morning of 6 January notifying him that his house would be attacked imminently. If Imad Abu Askar was as notorious and important as alleged, despite his young age, the Mission presumes that the Israeli authorities would have known where he lived and, in particular, that he lived in the very house they were about to destroy. It is extremely doubtful that the Israeli armed forces, having identified the house where alleged Hamas militants of some significance lived, would warn them so that they may escape and then bomb the house.

685. There is no indication that anyone of the name of Hassan Abu Askar was killed in the attacks as far as the Mission can determine. The Mission notes that the two Hamas operatives Israeli reports refer to were at least on one occasion referred to as brothers. Mr. Abu Askar confirms that there is no one of such a name in his family.

686. It would appear that shortly after the attack the Israeli armed forces received some information that two Abu Askar brothers had been killed. That much is indeed true. However, the use made of that information appears to the Mission to have been knowingly distorted. The brothers were Imad and Khaled, not Imad and Hassan as asserted. One was a 13-year-old boy, the other was a recently married 19-year-old. The certainty and specificity with which the Israeli authorities spoke at the time make it very difficult for them to suggest now that they had simply mixed up the names.

E. Factual findings

687. The facts gathered by the Mission indicate that on 6 January 2006 at around 1.45 a.m. the Israeli forces called Mr. Abu Askar's house, alerted him to the imminent strike on his house and proceeded to destroy it with an aerial strike about seven minutes later. As a result of the warning, Mr. Abu Askar was able to save himself and his family. The Mission finds that the Israeli forces did not seek to kill Mr. Abu Askar or the members of his family with this strike.

688. The Mission also finds that at around 4 p.m. Israeli forces launched at least four mortar shells. One landed in the al-Deeb courtyard, killing nine people immediately and two later on.

689. Three other shells landed on al-Fakhura Street, which was busy at the time, killing at least a further 24 people and injuring as many as 40.

690. The Mission notes that the attack may have been in response to a mortar attack from an armed Palestinian group but considers the credibility of Israel's position damaged by the series of inconsistencies and factual inaccuracies.

F. Legal findings

691. Elements of article 50 of Additional Protocol I reflect customary international law and provide the following:

> 2. The civilian population comprises all persons who are civilians.
>
> 3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

692. Article 57 is relevant in relation to the following provisions:

> 1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.
>
> 2. With respect to attacks, the following precautions shall be taken:
>
> (a) Those who plan or decide upon an attack shall:
>
> (i) Do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of article 52 and that it is not prohibited by the provisions of this Protocol to attack them;
>
> (ii) Take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;
>
> (iii) Refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
>
> (b) An attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
>
> (c) Effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.

693. The Mission considers there are two key issues to be considered in the present case: the issue of proportionality in relation to the military advantage to be gained and the choice of weapons used.

694. A detailed discussion of the difficulties of assessing military advantage is presented in the analysis of the Committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia in 1998.[392] According to that Committee, the following are some of the relevant questions to be asked:

(a) What are the relative values to be assigned to the military advantage gained and the injury to non-combatants and or the damage to civilian objects?

(b) What do you include or exclude in totalling your sums?

(c) What is the standard of measurement in time or space? And

(d) To what extent is a military commander obligated to expose his own forces to danger in order to limit civilian casualties or damage to civilian objects?

695. The Committee reflected further:

> The answers to these questions are not simple. It may be necessary to resolve them on a case-by-case basis, and the answers may differ depending on the background and values of the decision maker. It is unlikely that a human rights lawyer and an experienced combat commander would assign the same relative values to military advantage and to injury to non-combatants. Further, it is unlikely that military commanders with different doctrinal backgrounds and differing degrees of combat experience or national military histories would always agree in close cases. It is suggested that the determination of relative values must be that of the "reasonable military commander". Although there will be room for argument in close cases, there will be many cases where reasonable military commanders will agree that the injury to non-combatants or the damage to civilian objects was clearly disproportionate to the military advantage gained.

696. Accepting that these views are helpful to inform the present discussion, the Mission finds the following:

(a) The military advantage to be gained was to stop the alleged firing of mortars that posed a risk to the lives of Israeli armed forces;

(b) Even if there were people firing mortars near al-Fakhura Street, the calculation of the military advantage had to be assessed bearing in mind the chances of success in killing the targets as against the risk of firing into a street full of civilians and very near a shelter with 1,368 civilians and of which the Israeli authorities had been informed.

697. The Mission recognizes that for all armies proportionality decisions will present very genuine dilemmas in certain cases. The Mission does not consider this to be such a case.

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[392] "Final report to the Prosecutor…", paras. 47-50.

698. The Mission does not say that the Israeli armed forces had to accept the risk to themselves at all cost, but in addressing that risk it appears to the Mission that they had ample opportunity to make a choice of weapons that would have significantly limited the risk to civilians in the area. According to the position the Government has itself taken, Israeli forces had a full 50 minutes to respond to this threat – or at least they took a full 50 minutes to respond to it. Given the mobilization speeds of helicopters and fighter jets in the context of the military operations in Gaza, the Mission finds it difficult to believe that mortars were the most accurate weapons available at the time. The time in question is almost 1 hour. The decision is difficult to justify.

699. The choice of weapon – mortars – appears to have been a reckless one. Mortars are area weapons. They kill or maim whoever is within the impact zone after detonation and they are incapable of distinguishing between combatants and civilians. A decision to deploy them in a location filled with civilians is a decision that a commander knows will result in the death and injuries of some of those civilians.

700. Even if the version of events presented now by Israel is to be believed, the Mission does not consider that the choice of deploying mortar weapons in a busy street with around 150 civilians in it (not to mention those within the school) can be justified. The Mission does not consider that in these circumstances it was a choice that any reasonable commander would have made.

701. From the facts available to it, the Mission believes that there has been a violation of:

- Additional Protocol I, articles 57 (2) (a) (ii) and (iii) as set out above;
- The inherent right to life of the Palestinian civilians killed in the above incidents by depriving them arbitrarily of their life in violation of article 6 of the International Covenant on Civil and Political Rights.

702. The Mission views as being unreliable the versions given by the Israeli authorities. The confusion as to what was hit, the erroneous allegations of who was specifically hit and where the armed groups were firing from, the indication that Israeli surveillance watched the scene but nonetheless could not detect where the strikes occurred, all combine to give the impression of either profound confusion or obfuscation.

703. Whatever the truth, the Mission is of the view that the deployment of at least four mortar shells to attempt to kill a small number of specified individuals in a setting where large numbers of civilians were going about their daily business and 1,368 people were sheltering nearby cannot meet the test of what a reasonable commander would have determined to be an acceptable loss of civilian life for the military advantage sought.

XI. DELIBERATE ATTACKS AGAINST THE CIVILIAN POPULATION

704. According to the Israeli Government, the Israeli armed forces' rules of engagement for the military operation in Gaza emphasized the principle of distinction as one of four "guiding principles that applied in an integrated and cumulative manner: military necessity, distinction, proportionality and humanity". It defines the principle of distinction in the following terms: "Strikes shall be directed against military objectives and combatants only. It is absolutely

prohibited to intentionally strike civilians or civilian objects (in contrast to incidental proportional harm)."[393]

705. The Mission investigated 11 incidents in which serious allegations of direct attacks with lethal outcome were made against civilians. There appears to have been no justifiable military objective pursued in any of them. The first two incidents concern alleged attacks by Israeli armed forces against houses in the al-Samouni neighbourhood of Gaza during the initial phase of the ground invasion. The following group of seven incidents concern the alleged shooting of civilians who were trying to leave their homes to walk to a safer place, waving white flags and, in some of the cases, following an injunction from the Israeli armed forces to do so. In the last of these seven cases, a house was allegedly shelled with white phosphorous, killing five and injuring others. Two further members of the family were allegedly shot by Israeli troops as they tried to evacuate the wounded to a hospital. In the following incident, a mosque was targeted during the early evening prayer, resulting in the death of 15. In many of the incidents, the Israeli armed forces allegedly obstructed emergency medical help to the wounded. A further incident concerns the bombing of a family house, killing 22 family members. In the last of the incidents described, a crowd of family and neighbours at a condolence tent was attacked with flechettes.

A. Attacks on the houses of Ateya al-Samouni and Wa'el al-Samouni in Zeytoun, resulting in the death of 23 members of the al-Samouni family

706. To investigate the attacks on the houses of Ateya and Wa'el al-Samouni, which killed 23 members of the extended al-Samouni family, the Mission visited the site of the incidents.[394] It interviewed five members of the al-Samouni family and several of their neighbours on site.[395] Two members of the extended al-Samouni family, who were eyewitnesses to the incident, Messrs. Wa'el and Saleh al-Samouni, testified at the public hearing in Gaza. The Mission also interviewed PRCS ambulance drivers who went to the area on 4, 7 and 18 January 2009, and obtained copies of PRCS records. The Mission finally reviewed material on this incident submitted to it by TAWTHEQ as well as by NGOs.

707. The so-called al-Samouni area is part of Zeytoun, south of Gaza City, bordered to the east by al-Sekka Street, which in that part of Gaza runs parallel and very close to Salah ad-Din Street. It is inhabited by members of the extended al-Samouni family, which gives its name to the area, as well as by other families, such as the Arafats and the Hajjis. Al-Samouni area is more rural than urban, houses used to stand next to small olive and fig groves, chicken coops and other small plots of agricultural land. A small mosque stood in the centre of the neighbourhood. These no longer existed at the time of the Mission's visit in June 2009. The Mission saw very few

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[393] "The operation in Gaza…", para. 222.

[394] Graffiti left by Israeli soldiers in the house of Talal al-Samouni, which were photographed by the Mission, included (a) in Hebrew, under the Star of David: "The Jewish people are alive" and, above a capital "T" [referring to the army (*Tsahal*)], "This [the letter T] was written with blood"; (b) on a drawing of a grave, in English and Arabic, "Arabs 1948-2008 "; and (c) in English: "You can run but you can not hide", "Die you all", " 1 is down, 999,999 to go", "Arabs need to die" and "Make war not peace".

[395] Testimony to the Mission by Saleh al-Samouni, Talal al-Samouni, Wa'el Faris al-Samouni, Muhammad Asaad al-Samouni, Ms. Massouda Sobhia al-Samouni, Mr. Faraj Ata al-Samouni, Mrs. Abir Muhammad Hajji and Mr. Fawzi Arafat, 3 June 2009.

buildings left and a few tents standing amidst the rubble of collapsed houses and bulldozed land.[396]

708. The Israeli ground offensive from the east reached al-Samouni neighbourhood around 4 a.m. on 4 January 2009. In addition to the ground forces moving in from the east, there were, in all likelihood, heliborne[397] troops that landed on the roofs of several houses in the area. Residents told the Mission that there was shooting in the neighbourhood in the night of 3 to 4 January and again the following night, but denied having seen any Palestinian fighters.

1. The killing of Ateya al-Samouni and his son Ahmad

709. During the morning of 4 January 2009, Israeli soldiers entered many of the houses in al-Samouni area. One of the first, around 5 a.m., was the house of Ateya Helmi al-Samouni, a 45-year-old man. Faraj, his 22-year-old son, had already met Israeli soldiers some minutes earlier as he stepped outside the house to warn his neighbours that their roof was burning. The soldiers entered Ateya al-Samouni's house by force, throwing some explosive device, possibly a grenade. In the midst of the smoke, fire and loud noise, Ateya al-Samouni stepped forward, his arms raised, and declared that he was the owner of the house. The soldiers shot him while he was still holding his ID and an Israeli driving licence in his hands. The soldiers then opened gunfire inside the room in which all the approximately 20 family members were gathered. Several were injured, Ahmad, a boy of four, particularly seriously. Soldiers with night vision equipment entered the room and closely inspected each of those present. The soldiers then moved to the next room and set fire to it. The smoke from that room soon started to suffocate the family. A witness speaking to the Mission recalled seeing "white stuff" coming out of the mouth of his 17-month-old nephew and helping him to breathe.

710. At about 6.30 a.m. the soldiers ordered the family to leave the house. They had to leave Ateya's body behind but were carrying Ahmad, who was still breathing. The family tried to enter the house of an uncle next door, but were not allowed to do so by the soldiers. The soldiers told them to take the road and leave the area, but a few metres further a different group of soldiers stopped them and ordered the men to undress completely. Faraj al-Samouni, who was carrying the severely injured Ahmad, pleaded with them to be allowed to take the injured to Gaza. The soldiers allegedly replied using abusive language. They also said "You are bad Arabs", "You go to Nitzarim".

711. Faraj al-Samouni, his mother and others entered the house of an uncle in the neighbourhood. From there, they called PRCS. As described below, at around 4 p.m. that day a PRCS ambulance managed to come in the vicinity of the house where Ahmad was lying wounded, but was prevented by the Israeli armed forces from rescuing him. Ahmad died at

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[396] The UNOSAT report (p. 21) counts "114 … destroyed or severely damaged buildings, … 27 damaged greenhouse complexes, and 17 impact craters along roads or in cultivated fields" in the area of al-Samouni Street. A soldier stationed in Zeytoun during the military operations recalled that he observed through his binoculars "increasing devastation. Houses that disappear with time, farm land ploughed over time." (*Soldiers' testimonies…*, testimony 37, p. 82).

[397] One witness told the Mission that on 5 January 2009, walking on Salah ad-Din Street towards Gaza, he saw by the roadside parachutes Israeli troops had used to land in the area.

around 2 a.m. during the night of 4 to 5 January.[398] The following morning those present in the house, about 45 persons, decided to leave. They made themselves white flags and walked in the direction of Salah ad-Din Street. A group of soldiers on the street told them to go back to the house, but the witness said that they walked on in the direction of Gaza. The soldiers shot at their feet, without injuring anyone, however. Two kilometres further north on Salah ad-Din Street, they found ambulances which took the injured to al-Shifa hospital in Gaza.

2. The attack on the house of Wa'el al-Samouni

712. In other cases, the entry of soldiers was less violent than in Ateya al-Samouni's home. In one instance, the soldiers landed on the roof and descended the stairs to the ground floor, separated men from women, searched and handcuffed the men.[399] In another case they broke into a house by knocking a hole in the wall with a sledgehammer.[400] At the house of Saleh al-Samouni, the Israeli soldiers knocked on the door and ordered those inside to open it. All the persons inside the house stepped out one by one and Saleh's father identified each of the family members in Hebrew for the soldiers. According to Saleh al-Samouni, they asked to be allowed to go to Gaza City, but the soldiers refused and instead ordered them to go to Wa'el al-Samouni's house across the street.

713. The Israeli soldiers also ordered those in other houses to move to Wa'el al-Samouni's house. As a result, around 100 members of the extended al-Samouni family, the majority women and children, were assembled in that house by noon on 4 January. There was hardly any water and no milk for the babies. Around 5 p.m. on 4 January, one of the women went outside to fetch firewood. There was some flour in the house and she made bread, one piece for each of those present.

714. In the morning of 5 January 2009, around 6.30 – 7 a.m., Wa'el al-Samouni, Saleh al-Samouni, Hamdi Maher al-Samouni, Muhammad Ibrahim al-Samouni and Iyad al-Samouni, stepped outside the house to collect firewood. Rashad Helmi al-Samouni remained standing next to the door of the house. Saleh al-Samouni has pointed out to the Mission that from where the Israeli soldiers were positioned on the roofs of the houses they could see the men clearly. Suddenly, a projectile struck next to the five men, close to the door of Wa'el's house and killed Muhammad Ibrahim al-Samouni and, probably, Hamdi Maher al-Samouni.[401] The other men managed to retreat to the house. Within about five minutes, two or three more projectiles had struck the house directly. Saleh and Wa'el al-Samouni stated at the public hearing that these were missiles launched from Apache helicopters. The Mission has not been able to determine the type of munition used.

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[398] Faraj al-Samouni also told the Mission that, at the time of Ahmad's death, another relative gave birth to a baby in the same house. The following day the mother, who had to be transported in a wheelchair because she had broken her leg doing household chores, and the baby were among the group that managed to evacuate to Gaza City. Mother and child are in good health.

[399] Testimony of Muhammad Asaad al-Samouni, 3 June 2009.

[400] Testimony of Saleh al-Samouni, 3 June 2009.

[401] The Mission notes that while all testimonies agree that Muhammad Ibrahim al-Samouni died on the spot, there are some discrepancies as to whether Hamdi Maher al-Samouni was killed by the first strike or died subsequently inside the house.

715. Saleh al-Samouni stated that overall 21 family members were killed and 19 injured in the attack on Wa'el al-Samouni's house. The dead include Saleh al-Samouni's father, Talal Helmi al-Samouni, his mother, Rahma Muhammad al-Samouni, and his two-year-old daughter Azza. Three of his sons, aged five, three and less than one year (Mahmoud, Omar and Ahmad), were injured, but survived. Of Wa'el's immediate family, a daughter and a son (Rezqa, 14, and Fares, 12) were killed, while two smaller children (Abdullah and Muhammad) were injured.[402] The photographs of all the dead victims were shown to the Mission at the home of the al-Samouni family and displayed at the public hearing in Gaza.

716. After the shelling of Wa'el al-Samouni's house, most of those inside decided to leave immediately and walk to Gaza City, leaving behind the dead and some of the wounded. The women waved their scarves. Soldiers, however, ordered the al-Samounis to return to the house. When family members replied that there were many injured among them, the soldiers' reaction was, according to Saleh al-Samouni, "go back to death". They decided not to follow this injunction and walked in the direction of Gaza City. Once in Gaza, they went to PRCS and told them about the injured that had remained behind.

3. The attempts of PRCS and ICRC to rescue the civilians in the al-Samouni area

717. PRCS had made its first attempt to evacuate the injured from the al-Samouni area on 4 January 2009 around 4 p.m. after receiving a call from the family of Ateya al-Samouni. PRCS had called ICRC, asking it to coordinate its entry into the area with the Israeli armed forces. A PRCS ambulance from al-Quds hospital managed to reach the al-Samouni area. The ambulance had turned west off Salah ad-Din Street when, at one of the first houses in the area, Israeli soldiers on the ground and on the roof of one of the houses directed their guns at it and ordered it to stop. The driver and the nurse were ordered to get out of the vehicle, raise their hands, take off their clothes and lie on the ground. Israeli soldiers then searched them and the vehicle for 5 to 10 minutes. Having found nothing, the soldiers ordered the ambulance team to return to Gaza City, in spite of their pleas to be allowed to pick up some wounded. In his statement to the Mission, the ambulance driver recalled seeing women and children huddling under the staircase in a house, but not being allowed to take them with him.[403]

718. As soon as the first evacuees from the al-Samouni family arrived in Gaza City on 5 January, PRCS and ICRC requested permission from the Israeli armed forces to go into the al Samouni neighbourhood to evacuate the wounded. These requests were denied. On 6 January around 6.45 p.m., one ICRC car and four PRCS ambulances drove towards the al-Samouni area

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[402] The names of the other 15 members of the extended al-Samouni family killed in the attack on Wa'el al-Samouni's house are: Rabab Izaat (female, aged 37); Tawfiq Rashad (male, aged 22); Layla Nabeeh (female, aged 44); Ismaeil Ibrahim (male, aged 16); Ishaq Ibrahim (male, aged 14); Maha Muhammad (female, aged 20); Muhammad Hilmi Talal (the six-year-old son of Maha); Hanan Khamis Sa'di (female, aged 36); Huda Naiel (female, aged 17); Rezqa Muhammad Mahmoud (female, aged 56); Safaa Sobhi (female, aged 24); al-Moa'tasim Bilah Muhammad (male, aged six months); Hamdi Maher (male, aged 24); Rashad Helmi (male, aged 42); Nassar Ibrahim Hilmi (male, aged 6).

[403] Mission interview with PRCS driver W2, 10 June 2009.

in spite of the lack of coordination with the Israeli armed forces, but were not allowed to enter the area and evacuate the wounded.

719. On 7 January 2009, the Israeli armed forces finally authorized ICRC and PRCS to go to the al-Samouni area during the "temporary ceasefire" declared from 1 to 4 p.m. on that day.[404] Three PRCS ambulances, an ICRC car and another car used to transport bodies drove down Salah ad-Din Street from Gaza City until, 1.5 km north of the al-Samouni area, they found it closed by sand mounds. ICRC tried to coordinate with the Israeli armed forces to have the road opened, but they refused and asked the ambulance staff to walk the remaining 1.5 km.

720. Once in the al-Samouni neighbourhood, PRCS looked for survivors in the houses. An ambulance driver who was part of the team told the Mission that in Wa'el al-Samouni's house they found 15 dead bodies and two seriously injured children.[405] One of the children had a deep wound in the shoulder, which was infected and giving off a foul odour. The children were dehydrated and scared of the PRCS staff member. In a house close by, they found 11 persons in one room, including a dead woman.

721. The rescue teams had only three hours for the entire operation and the evacuees were physically weak and emotionally very unstable. The road had been damaged by the impact of shells and the movement of Israeli armed forces, including tanks and bulldozers. The rescuers put all the elderly on a cart and pulled it themselves for 1.5 kilometres to the place where they had been forced to leave the ambulances. The dead bodies lying in the street or under the rubble, among them women and children, as well as the dead they had found in the houses had to be left behind. On the way back to the cars, PRCS staff entered one house where they found a man with two broken legs. While they were carrying the man out of the house, the Israeli armed forces started firing at the house, probably to warn that the three-hour "temporary ceasefire" were about to expire. PRCS was not able to return to the area until 18 January.

722. On 18 January 2009, members of the al-Samouni family were finally able to return to their neighbourhood. They found that Wa'el al-Samouni's house, as most other houses in the neighbourhood and the small mosque, had been demolished. The Israeli armed forces had destroyed the building on top of the bodies of those who died in the attack. Pictures taken on 18 January show feet and legs sticking out from under the rubble and sand, and rescuers pulling out the bodies of women, men and children. A witness described to the Mission family members taking away the corpses on horse carts, a young man sitting in shock beside the ruins of his house and, above all, the extremely strong smell of death.[406]

4. Factual findings

723. The Mission found the foregoing witnesses to be credible and reliable. It has no reason to doubt their testimony.

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[404] Mission interview with PRCS driver W1, 10 June 2009.

[405] Ibid.

[406] Mission interview with witness W2, 7 June 2009.

724. With regard to the context in which the attacks on the houses of Ateya al-Samouni and Wa'el al-Samouni took place, the Mission notes that there is some indication that there might have been a presence of Palestinian combatants in the al-Samouni neighbourhood during the first hours of the Israeli ground attack. A witness told the Mission that when he heard the first shots in the vicinity of his house in the night of 3 to 4 January, he at first thought it was Palestinian fighters. An NGO report submitted to the Mission states that a Palestinian combatant, reportedly a member of the Islamic Jihad, was killed in the al-Samouni area around midnight between 3 and 4 January.[407]

725. The Mission considers, however, that the testimonies of the witnesses strongly suggest that already before daybreak on 4 January 2009 the Israeli armed forces were in full control of the al-Samouni neighbourhood. The Israeli soldiers had taken up position on the roofs of the houses in the area. According to several witnesses, the soldiers on the street spoke to residents who had ventured out of their houses.[408] In some cases (for instance, at the house of Saleh al-Samouni and at the house Iyad al-Samouni was in, see below), they entered the houses non-violently after knocking on the door. According to Saleh al-Samouni, the prolonged identification of all the persons present in his house (his father identifying each family member in Hebrew for the soldiers) took place outside. The soldiers appear to have been confident that they were not at immediate risk of being attacked.

726. The Mission also reviewed the submission it received from an Israeli researcher, arguing generally that statements from Palestinian residents claiming that no fighting took place in their neighbourhood are disproved by the accounts Palestinian armed groups give of the armed operations. The Mission notes that, as far as the al-Samouni neighbourhood is concerned, this report would appear to support the statements of the witnesses that there was no combat.[409]

727. Regarding the attack on Ateya al-Samouni's house, the Mission finds that the account given to it by Faraj al-Samouni is corroborated by the soldiers' testimonies published by the Israeli NGO Breaking the Silence. The assault on Ateya al-Samouni's house appears to be the procedure of the Israeli armed forces referred to as a "wet entry". A "wet entry" is, according to the soldier's explanation, "missiles, tank fire, machine-gun fire into the house, grenades. Shoot as we enter a room. The idea was that when we enter a house, no one there could fire at us." This procedure was, according to the soldier, thoroughly practised during recent Israeli armed forces manoeuvres.[410]

728. The Mission notes that considering the generally calm circumstances that appear to have prevailed in the al-Samouni neighbourhood at the time (as evidenced by the way the soldiers

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[407] Al Mezan's table of children killed during the military operations in Gaza.

[408] Testimonies of Saleh al-Samouni and Faraj al-Samouni.

[409] "The hidden dimension of Palestinian war casualties…". Only 4 of the more than 100 entries in the submission refer to combat action in Zeytoun, the much larger part of Gaza City of which al-Samouni neighbourhood is a part. The incidents in Zeytoun that are mentioned reportedly occurred on 6, 7, 11 and 13 January 2009, and consist of Palestinian combatants opening fire against Israeli troops with rocket-propelled grenades, a mortar (in one case) and detonating an explosive device.

[410] *Soldiers' Testimonies…*, testimony 4, p. 14; see also testimony 37, p. 82.

entered other houses after knocking on the door) and the fact that the soldiers had already spoken to Faraj al-Samouni, one of the persons in Ateya al-Samouni's house, the Mission cannot see any circumstance justifying the violent entry into the house.

729. With regard to the attack on the five men who stepped out of Wa'el al-Samouni's house to fetch firewood in the early morning of 5 January 2009 and to the subsequent shelling of the house, the Mission notes that the members of the other families who had been moved by the Israeli forces into Wa'el al-Samouni's house had been searched by Israeli soldiers, as recounted by Saleh al-Samouni. Everything indicates that the Israeli forces knew that there were about 100 civilians in the house. Indeed, the families had asked to be allowed to leave the area towards a safer place, but had been ordered to stay in Wa'el al-Samouni's house. The house must have been under constant observation by the Israeli soldiers, who had complete control over the area at the time.

730. The Mission was not able to determine whether the attack was carried out by missiles launched from Apache helicopters, as Saleh and Wa'el al-Samouni told the Mission at the public hearing in Gaza, or by other munitions. Nevertheless, the fact that a first projectile struck next to the five men soon after they had left the house (at a time at which there was no combat in the area) and two or three projectiles struck the house after the survivors had retreated into the house, indicates that the weaponry used allowed a high degree of precision with a short response time and that the five men and then the house were the intended targets of the attack.

731. The Mission notes that, four days later, the Israeli armed forces denied that the attack on the house of Wa'el al-Samouni had taken place. On 9 January 2009, an Israeli army spokesman, Jacob Dallal, reportedly told the Reuters news agency that "the IDF did not mass people into any specific building. […] Furthermore, we checked with regard to IDF fire on the 5th. The IDF did not target any building in or near Zeitun on the 5th."[411] The Mission is not aware of any subsequent statement from the Israeli Government which would contradict this blanket denial or suggest that the allegations have been the subject of further investigation.

732. With regard to the obstruction of emergency medical access to the wounded in the al-Samouni neighbourhood, the Mission notes that four-year-old Ahmad al-Samouni was still alive at 4 p.m. on 4 January 2009, when the PRCS ambulance called by his relatives managed to arrive within what the Mission estimates to be 100 to 200 metres from the house where he was. In fact, he died about 10 hours later, which suggests that he might have had a good chance of survival. Israeli soldiers stopped the ambulance and thoroughly searched the driver, nurse and vehicle.[412] Although they did not find anything indicating that the ambulance staff was not on a genuine emergency mission to evacuate a wounded civilian, they forced the ambulance to return to Gaza City without the injured Ahmad.

733. On 5 and 6 January 2009, following the arrival in Gaza City hospitals of survivors of the attack on Wa'el al-Samouni's house, PRCS and ICRC requested permission from the Israeli

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[411] http://www.javno.com/en-world/gaza-boy-recounts-house-of-death_222451.

[412] In addition to searching the ambulance driver and the nurse, the Israeli soldiers also appear to have intended to humiliate them by forcing them to lie down on the street in their underwear for 5 to 10 minutes, in the cold of an early January late afternoon.

armed forces to go into the al-Samouni neighbourhood to evacuate the wounded. These requests were denied. According to the information available to PRCS, the Israeli armed forces told ICRC that there were combat operations going on in the area. A PRCS ambulance driver who was part of the PRCS convoy which went to the area in spite of the refusal of the Israeli armed forces to grant permission, reported that there were no clashes at the time.[413] PRCS and ICRC were not able to evacuate the wounded from the area until 7 January in the afternoon.

734. The information before it leads the Mission to believe that the Israeli armed forces arbitrarily prevented the evacuation of the wounded from the al-Samouni area, thereby causing at least one additional death, worsening of the injuries in others, and severe psychological trauma in at least some of the victims, particularly children.

735. These findings are corroborated by the press release ICRC issued on 8 January 2008:

> The ICRC had requested safe passage for ambulances to access this neighbourhood [the al-Samouni area in Zeytoun] since 3 January but it only received permission to do so from the Israel Defense Forces during the afternoon of 7 January.
>
> The ICRC/PRCS team found four small children next to their dead mothers in one of the houses. They were too weak to stand up on their own. One man was also found alive, too weak to stand up. In all there were at least 12 corpses lying on mattresses.
>
> In another house, the ICRC/PRCS rescue team found 15 other survivors of this attack including several wounded. In yet another house, they found an additional three corpses. Israeli soldiers posted at a military position some 80 metres away from this house ordered the rescue team to leave the area which they refused to do. There were several other positions of the Israel Defense Forces nearby as well as two tanks.[414]

B. Killing of civilians attempting to leave their homes to walk to safer areas

1. The shooting of Iyad al-Samouni

736. The Mission received testimony on the death of Iyad al-Samouni from Muhammad Asaad al-Samouni and Fawzi Arafat, as well as from a PRCS staff member. In the night of 3 to 4 January 2009, Iyad al-Samouni, his wife and five children were, together with about 40 other members of their extended family in Asaad al-Samouni's house, very close to the houses of Wa'el al-Samouni and Ateya al-Samouni (the scenes of the incidents described above). At 1 a.m. on 4 January 2009 they heard noise on the roof. At around 5 a.m. Israeli soldiers walked down the stairs from the roof, knocked on the door and entered the house. They asked for Hamas fighters. The residents replied that there were none. The soldiers then separated women, children and the elderly from the men. The men were forced into a separate room, blindfolded and handcuffed with plastic handcuffs. They were allowed to go to the toilet only after one of the men urinated on himself. The soldiers stationed themselves in the house.

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[413] PRCS records at al-Quds hospital.

[414] http://www.icrc.org/web/eng/siteeng0.nsf/html/palestine-news-080109.

737. In the morning of 5 January 2009, after the shelling of Wa'el al-Samouni's house, two of the survivors took refuge in Asaad al-Samouni's house. From the testimonies received, the Mission is not able to state whether the Israeli soldiers then ordered the al-Samouni family members in the house to leave and walk to Gaza City, or whether it was the families who pleaded with the soldiers to be allowed to leave having heard the appalling news of what had happened to their relatives in Wa'el al-Samouni's house. In any event, the persons assembled in Asaad al-Samouni's house walked out of the house and down al-Samouni Street to take Salah ad-Din Street in the direction of Gaza City. They had been instructed by the soldiers to walk directly to Gaza City without stopping or diverting from the direct route. The men were still handcuffed and the soldiers had told them that they would be shot if they attempted to remove the handcuffs.

738. On Salah ad-Din Street, just a few metres north of al-Samouni Street and in front of the Juha family house,[415] a single or several of the Israeli soldiers positioned on the roofs of the houses opened fire. Iyad was struck in the leg and fell to the ground.[416] Muhammad Asaad al-Samouni, who was walking immediately behind him, moved to help him, but an Israeli soldier on a rooftop ordered him to walk on. When he saw the red point of a laser beam on his body and understood that an Israeli soldier had taken aim at him, he desisted. The Israeli soldiers also fired warning shots at Muhammad Asaad al-Samouni's father to prevent him from assisting Iyad to get back on his feet. Iyad al-Samouni's wife and children were prevented from helping him by further warning shots. Fawzi Arafat, who was part of another group walking from the al-Samouni neighbourhood to Gaza, told the Mission that he saw Iyad al-Samouni lying on the ground, his hands shackled with white plastic handcuffs, blood pouring from the wounds in his legs, begging for help. Fawzi Arafat stated that he yelled at an Israeli soldier "we want to evacuate the wounded man". The soldier, however, pointed his gun at Iyad's wife and children and ordered them to move on without him.

739. Iyad al-Samouni's family and relatives were forced to abandon him and continue to walk towards Gaza City. At al-Shifa hospital they reported his case and those of the other dead and wounded left behind. Representatives of PRCS told them that the Israeli armed forces were not permitting them to access the area.

740. A PRCS staff member[417] told the Mission that three days later, on 8 January 2009, PRCS was granted permission by the Israeli armed forces through ICRC to evacuate Iyad al-Samouni. The PRCS staff member found him on the ground in Salah ad-Din Street in the place described by his relatives. He was still handcuffed. He had been shot in both legs and had bled to death.

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[415] This is the home of the family of Mu'een Juha, see the case of the shooting of Ibrahim Juha discussed below in the chapter.

[416] According to the researchers of a Palestinian NGO who investigated this case, the mobile phone in the pocket of the cousin walking in front of Iyad al-Samouni rang and Iyad al-Samouni tried to take the phone out of his pocket (the cousin's hands were tied as well, so he could not reach into his pocket himself), whereupon the Israeli soldier opened fire. This detail was not mentioned to the Mission in its interviews.

[417] Mission interview with PRCS driver W4, 10 June 2009.

2. Factual findings

741. The Mission found the witnesses it heard in relation to the shooting of Iyad al-Samouni to be credible and reliable. It has no reason to doubt the veracity of the main elements of their testimony, which is corroborated by the testimony of the PRCS ambulance driver.

742. The Mission finds that Iyad al-Samouni was part of a large group of civilians who were leaving their homes and walking towards Gaza City in an area under the complete control of the Israeli armed forces. His hands were tied with white plastic handcuffs. The soldier who opened fire on him should have known, on the basis of the plastic handcuffs if not of coordination with his fellow soldiers stationed in Asaad al-Samouni's house a few hundred metres away, that he had been searched and detained by the Israeli armed forces. In opening fire on Iyad al-Samouni, the Israeli armed forces shot deliberately at a civilian who posed no threat to them.

743. While the fire directed at Iyad al-Samouni could have been intended to incapacitate rather than to kill, by threatening his family members and friends with lethal fire, the Israeli armed forces ensured that he did not receive lifesaving medical help. They deliberately let him bleed to death.

744. The Mission found that the witnesses who spoke about the death of Iyad al-Samouni appeared to be profoundly traumatized by the recollection of his pleading for help from his wife, children and relatives. They also recalled the helplessness of his family, who were under a very credible threat of being shot themselves if they came to his help, and who were compelled to abandon him on the road to bleed to death.

3. The death of Muhammad Hajji in the attack on his family's house and the shooting of Shahd Hajji and Ola Masood Arafat

745. The Mission interviewed Mrs. Abir Hajji in private and received her testimony at the public hearing in Gaza.

746. In the night of 4 to 5 January 2009, the family of Muhammad Hajji and his wife Abir[418] was at home in the al-Samouni neighbourhood. In the hope of being safer from the shooting, they had put their mattresses on the floor. At around 1.30 a.m., Abir Hajji heard a very loud explosion, which shook the house and shattered the windows. Some minutes later, Abir Hajji was in a different room from the rest of the family, looking for her mobile phone to use as a torch, when she heard a second explosion, this time apparently inside the house. The children screamed, shouted "Dad!", but her husband did not reply. In the pitch-darkness she found her husband and felt that he was injured on one side of his head, in the area of the eye and the ear. Her daughters Noor, aged 6, and Nagham, aged 13, were injured.

747. She called her neighbour and brother-in-law, Nasser Hajji, who examined his brother and told her that he was dead. As they were preparing to move to Nasser Hajji's house, Israeli soldiers broke into the house shooting. The soldiers asked Nasser Hajji whether he "was

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[418] Muhammad and Abir Hajji had five children, four daughters, Ghada (aged 16), Nagham (aged 13), Noor al-Huda (aged 6) and Shahd (aged 3), and a son, Amin (aged 11).

Hamas", which he denied assuring them that nobody in the area was a member of either Hamas or Fatah. Mrs. Hajji remembers the soldiers laughing and insisting that Nasser Hajji "was Hamas". The laughing added to her pain, as the soldiers had seen her dead husband and the children. Nasser Hajji was ordered to undress and then pull his brother's body to another room, where the soldiers threw mattresses and blankets on the body (the body was still lying in the same position when Abir Hajji returned to her home two weeks later). Her children asked her whether they would be killed as well. She told them to say the *Shehada*, the prayer recited in the face of death. Mrs. Hajji also recalled that the soldiers were breaking the tiles on the floor of the house and digging in the earth below. Asked about this at the public hearing, she expressed the opinion that this was to obtain sand for the sandbags they subsequently placed on the roof of the house.[419]

748. After some time, during which they were sitting on the ground as ordered by the Israeli soldiers, Mrs. Hajji, her children and Nasser Hajji were taken to Nasser's house. There they found four households of the extended Hajji family. The young men had been handcuffed and four of them also blindfolded. About 60 Israeli soldiers were in the house. Mrs. Hajji recalled them carrying around food and drinks and relaxing in the couches. One of her daughters asked to be allowed to eat something. The soldiers first denied her request, but then allowed her to go into the kitchen and get a small piece of bread.

749. After the midday prayers on 5 January 2009, the Israeli soldiers separated the men from the women and children. The latter were ordered to walk to Rafah. The Hajjis protested, asking to be allowed to go to Gaza City, where they had relatives, but the soldiers told them that they would be shot if they tried to walk to Gaza City. Nasser Hajji and his 18-year-old son were allowed to walk with the women and children, while the other men stayed behind.[420]

750. The group of Hajji family members walked down the alley to al-Sekka Street. There they were joined by members of the Arafat family, who also live in the al-Samouni neighbourhood, carrying white flags. On al-Sekka Street, one of the Israeli soldiers standing on a rooftop ordered the families to turn south and walk towards Rafah. The families begged to be allowed to walk to Gaza City instead. Without warning, the Israeli soldiers opened fire, "shooting at random" according to Abir Hajji. Ola Masood Arafat, a 28-year-old woman, was struck by a bullet and died on the spot. Mrs. Hajji was wounded in her right arm. Her three-year-old daughter Shahd was shot in the chest. Abir Hajji, who was still carrying Shahd, her other children, her mother-in-law and others managed to take refuge in a house. There they found out that Shahd was still alive.

751. Later on, they left the house and walked together with other families to Salah ad-Din Street and then south on that road. When they reached the Gaza wadi, a motorist took Abir Hajji and her daughter Shahd to a hospital in Deir al-Balah. Shahd died of her wound very soon after

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[419] *Soldiers' Testimonies…* suggests that breaking the tiles in civilian homes was a standard practice with two purposes: to fill sandbags ("Take for example the house we were in – it was abandoned and you go about it as if you own it. You break floor tiles to make sandbags, you break stuff to prepare an outpost", testimony 46, p. 100,) and to search for tunnels ("You're also told to wreck the floor tiles to check for tunnels", testimony 23, p. 54)

[420] Abir Hajji learned after the armed operations that they had been detained in that house for another three days and then released.

arriving at the hospital. Abir Hajji, who was two months pregnant at the time, also suffered a miscarriage.

4. Factual findings

752. The Mission found Mrs. Hajji to be a credible and reliable witness. It has no reason to doubt the veracity of her testimony. The Mission also notes that according to the testimony of four other witnesses (those it heard in the case of Ibrahim Juha below), a very similar incident occurred in the immediate vicinity on the same day.

753. With regard to the death of Muhammad Hajji, the Mission notes that Mrs. Hajji's testimony does not provide sufficient information to establish exactly what happened. On the basis of the information before it, the Mission can neither make a statement as to what type of weapon killed him, nor as to whether he was the intended target of a direct attack. The circumstances of his death suggest, however, that he was killed by fire from the Israeli armed forces while at home in a room with his children.

754. As to the fatal shooting of Shahd Hajji and Ola Masood Arafat, Mrs. Hajji's testimony as well as that of Mr. Mu'een Juha and Mrs. Juha, the parents of Ibrahim Juha, of Mr. Sameh Sawafeary and of Mr. Rajab Darwish Mughrabi (see the case of Ibrahim Juha below) all establish that there were no combat operations in the area at the time of the incident. Indeed, the Israeli armed forces would not have ordered the members of the extended Hajji, Arafat, Juha and Sawafeary families to walk to Rafah, thereby asking hundreds of civilians to come out of their houses and fill the streets, if there had been any fighting in the neighbourhood at the time. The Israeli armed forces opened fire on a group of persons they had interacted with during the preceding 12 hours and therefore knew to be civilians. In doing so they killed Ola Masood Arafat and three-year-old Shahd Hajji and injured her mother, who was holding her in her arms.

5. The shooting of Ibrahim Juha

755. The Mission interviewed three eyewitnesses to the shooting of Ibrahim Juha and a further witness of the events surrounding the shooting.[421] The events preceding and following the shooting of Ibrahim Juha are described in greater detail in chapter XIII below in connection with the destruction of the Sawafeary chicken farms.

756. The Juha family lives in a house on al-Sekka Street a few meters north of where al-Samouni Street goes off Salah ad-Din Street to the west. The house was struck by several missiles during the night of 3 to 4 January 2009, which had caused significant destruction. In the early morning of 4 January, Israeli soldiers entered the house and fired into the room where the Juha family, consisting of Mr. Juha, his two wives, his mother and 13 children, was assembled. Photographs of the scene taken by Mr. Juha show that numerous rounds were discharged. The family was made to assemble in the upper part of the house. They were then ordered to leave the house and walk towards Rafah.

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[421] Mr. Mu'een Juha and Mrs. Juha, the parents of Ibrahim, Mr. Sameh Sawafeary and Mr. Mughrabi.

757. The Juha family and their neighbours, the Sawafeary family, walked down al-Sekka Street for 100 metres in the direction of Rafah. When they reached the house of another neighbour, Mr. Abu Zur, they were invited into that house and decided to stay there. The three families spent 4 January in the house. On the morning of 5 January the house was the subject of intense firing from Israeli troops in the vicinity. After some time Israeli soldiers approached the house and ordered everyone to come out. The men were separated from the women. From the group of men four were separated and required to strip to their underwear. They were held in a house opposite the Abu Zur house, belonging to Mr. Subhi al-Samouni. The remaining group was told once again to leave the area and walk towards Rafah. Mr. Juha recounts that walking down al Sekka Street the group came to a point where a large crater blocked the way ahead and the surrounding rubble provided a difficult obstacle for some members of his family, including his ageing mother, who had fainted shortly before outside the Abu Zur house.

758. In the face of these obstacles the group of three families walked east towards Salah ad-Din Street. There they entered the house of another family, the Mughrabis. With the arrival of the Juha, Sawafeary and Abu Zur families, there were now more than 70 persons assembled in the house.

759. Mr. Juha told the Mission that, after taking a little rest in the Mughrabi house, he came to the view that it was impossible for them all to stay there, given their substantial numbers and the earlier experience of the intense firing at the Abu Zur house. He decided that they should seek to go back into the street and move to another place. Mr. Mughrabi strongly advised against this.

760. The Juha, Abu Zur and Sawafeary families went back into the street in the afternoon of 5 January. Mr. Juha had his mother in front of him propped up on a two-wheeled trolley as she was unable to walk. Mr. Sawafeary was near to him at the front of the group. Behind him, towards the middle of the group, was his 15-year-old son, Ibrahim, carrying a white flag. Mr. Juha believes he heard two shots. One of the shots hit his son in the chest. The group immediately sought cover once again in the Mughrabi house. They tried to care for Ibrahim in the workshop at the front of the house. His mother tried to sew the wound with a needle and thread and sterilize the materials with eau de cologne. Ibrahim died some six hours after he was shot.

761. The group of over 70 persons remained in the house until 8 January in the afternoon, when ICRC and PRCS representatives came to the neighbourhood and they managed to leave the area and walk to Gaza City.

6. Factual findings

762. The Mission found the witnesses of the shooting of Ibrahim Juha to be credible and reliable. It has no reason to doubt the veracity of their testimony.

763. The testimonies of Mr. Mu'een Juha and Mrs. Juha, Mr. Sameh Sawafeary and Mr. Rajab Darwish Mughrabi, as well as of Mrs. Abir Hajji, all establish that there were no combat operations in the area at the time of the incident. The Israeli armed forces had attacked Mr. Juha's house and that of Mr. Abu Zur, where the Juhas and other families had taken refuge, forcing them to leave the area. It was the Israeli armed forces that ordered these families to take the road to Rafah. In sum, the Israeli armed forces deliberately opened fire on a group of persons

they had interacted with during the preceding 24 hours and therefore knew to be civilians, killing the child Ibrahim Juha.

7. The killing of Majda and Rayya Hajaj

764. The Mission visited Juhr ad-Dik village twice and interviewed three eyewitnesses of the killing of Majda and Rayya Hajaj[422] and two other members of the family, sons of Rayya Hajaj (and brothers of Majda). The Mission also measured the distances between the reported location of the victims at the time of the shooting and the tanks. The Mission further obtained copies of the PRCS records on its attempts to obtain approval from the Israeli armed forces to dispatch ambulances to Juhr ad-Dik. Finally, the Mission saw the agricultural land destroyed by tanks and bulldozers, the rubble remaining of the house of Saleh Hajaj, and the devastation and graffiti[423] left by the Israeli soldiers in Youssef Hajaj's house.

765. Juhr ad-Dik is a village in an agricultural area south-east of Gaza City, about 1.5 kilometres from the border with Israel (the so-called Green Line). On 3 January 2009, an Israeli tank force entered Juhr ad-Dik. Part of the tank force moved on towards Salah ad-Din Street and Zeytoun; the remaining force occupied Juhr ad-Dik.[424]

766. On 4 January 2009, at about 6 a.m., shells hit the house of Youssef Hajaj's family, where he, his wife and children, the wife and children of his brother Majd (who was not with his family), their sister Majda, aged 37, and mother Rayya, aged 65, were taking shelter. A daughter of Youssef, 13-year-old Manar, was injured. Between 9 and 10 a.m., the Hajaj family decided to move to the house of their neighbour Muhammad al-Safdi. Around 11 a.m., Youssef Hajaj received a phone call from his brother Majd, informing him that the Israeli armed forces had announced on local radio stations (al-Aqsa and al-Hurriya) that people living along the border between Israel and Gaza should evacuate their houses to remain safe. Having prepared two make-shift white flags, which were carried by Majda Hajaj and Ahmad Muhammad al-Safdi, 25 years old, who was also holding his two-year-old son in his arms, 26 members of the two families (more than half of them children)[425] left the al-Safdi house. They started walking down the road westwards, where a group of Israeli tanks was standing at a distance of 320 metres.[426] They walked very slowly, covering 200 metres in about 10 minutes. The group was some 120 metres away from the Israeli tanks when, without warning, they were fired on from the direction of the tanks. Majda Hajaj and her mother, Rayya, were hit. Majda died of her injuries instantly. Rayya tried to flee, but fell to the ground after a few metres.

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[422] Mission interviews of Ms. Farhaneh Hajaj, Ms. Siham Hajaj, Mr. Muhammad al-Safdi, Mr. Youssef Hajaj and Mr. Saleh Hajaj.

[423] Graffiti photographed by the Mission in the Hajaj house included, in Hebrew, names and dates, such as "Yahir Ben Eliezer Commander mon. [for month] March 2006" and "Yohanan Boutboul Commander mon. [for month] November 2005" and, in English, the phrase "Death will find you soon".

[424] Testimony to the Mission by Youssef and Saleh Hajaj, 3 June 2009.

[425] The overall number of persons leaving the house of the al-Safdi family was also indicated to the Mission as 28. The Mission was told that 17 children led the procession.

[426] This and the other distances mentioned in the summary of the case were measured with GPS instruments.

767. The others scrambled back to the al-Safdi family house, and managed to take shelter behind a shack next to it and later inside the house. Members of the Hajjaj family called PRCS for help with the evacuation of Majda and Rayya Hajaj's bodies. PRCS in turn contacted ICRC. The Israeli armed forces denied ICRC access to Juhr ad-Dik on the ground that the area had been declared a military zone.[427] The two families spent the remainder of the day and the night sheltering under the staircase in the al-Safdi house, while the Israeli armed forces continued to direct shell and machine-gun fire at the house. The following day they walked to Gaza City by a different, circuitous route. The Hajaj family found the bodies of Majda and Rayya Hajaj under the rubble when they were able to return to Juhr ad-Dik on the evening of 18 January 2009.

8. Factual findings

768. The Mission found the witnesses interviewed to be credible and reliable. It has no reason to doubt the veracity of their testimony.

769. The Mission finds that Majda and Rayya Hajaj were part of a group of civilians moving with white flags through an area in which there was, at the time, no combat. Moreover, the Israeli armed forces had, according to witnesses interviewed by the Mission, called over local radio on the civilian population of Juhr ad-Dik to evacuate their homes and walk towards Gaza City. In the light of these reported circumstances, and particularly considering that the civilians were at a distance of more than 100 metres from them, the Israeli soldiers could not have perceived an imminent threat from the movement of people in that area, as they would have expected the civilians to respond to the call for evacuation. The Mission, therefore, finds the shooting and killing of Majda and Rayya Hajjaj a deliberate act on the part of the Israeli soldiers.

9. The shooting of Amal, Souad, Samar and Hajja Souad Abd Rabbo

770. The Mission visited the site of the shooting of Amal, Souad, Samar and Hajja Souad Abd Rabbo and interviewed an eyewitness, Mr. Khalid Abd Rabbo, on site. Khalid and Kawthar Abd Rabbo gave their testimony at the public hearing in Gaza on 28 June 2009. The Mission also reviewed sworn statements from two additional witnesses it was not able to interview in person.[428]

771. The family of Khalid Abd Rabbo and his wife Kawthar lived on the ground floor of a four-storey building in the eastern part of Izbat Abd Rabbo, a neighbourhood east of Jabaliyah inhabited primarily by members of their extended family. Khalid Abd Rabbo's parents and brothers with their families lived on the upper floors of the house. The residents of Izbat Abd Rabbo started hearing the sound of shooting and of the Israeli ground incursion in the evening of 3 January 2009. Khalid Abd Rabbo's family decided to stay inside the house, all gathered on the ground floor, as they had done safely during previous Israeli incursions into the neighbourhood.

772. In the late morning of 7 January 2009, Israeli tanks moved onto the small piece of agricultural land in front of the house. Shortly after 12.30 p.m., the inhabitants of that part of Izbat Abd Rabbo heard megaphone messages telling all residents to leave. According to one

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[427] PRCS records confirm the ICRC requests to the Israeli armed forces to be allowed access to Juhr ad-Dik.

[428] Affidavits of W5 and W6.

witness's recollection, there had also been a radio message broadcast by the Israeli armed forces around 12.30 announcing that there would be a temporary cessation of shooting between 1 and 4 p.m. that day, during which time residents of the area were asked to walk to central Jabaliyah.

773. At about 12.50 p.m., Khalid Abd Rabbo, his wife Kawthar, their three daughters, Souad (aged 9), Samar (aged 5) and Amal (aged 3), and his mother, Hajja Souad Abd Rabbo, stepped out of the house, all of them carrying white flags. Less than 10 metres from the door was a tank, turned towards their house. Two soldiers were sitting on top of it having a snack (one was eating chips, the other chocolate, according to one of the witnesses). The family stood still, waiting for orders from the soldiers as to what they should do, but none was given. Without warning, a third soldier emerged from inside the tank and started shooting at the three girls and then also at their grandmother. Several bullets hit Souad in the chest, Amal in the stomach and Samar in the back. Hajja Souad was hit in the lower back and in the left arm.

774. Khalid and Kawthar Abd Rabbo carried their three daughters and mother back inside the house. There, they and the family members who had stayed inside tried to call for help by mobile phone. They also shouted for help and a neighbour, Sameeh Atwa Rasheed al-Sheikh, who was an ambulance driver and had his ambulance parked next to his house, decided to come to their help. He put on his ambulance crew clothes and asked his son to put on a fluorescent jacket. They had driven a few metres from their house to the immediate vicinity of the Abd Rabbo house when Israeli soldiers near the Abed Rabbo house ordered them to halt and get out of the vehicle. Sameeh al-Sheikh protested that he had heard cries for help from the Abd Rabbo family and intended to bring the wounded to hospital. The soldiers ordered him and his son to undress and then re-dress. They then ordered them to abandon the ambulance and to walk towards Jabaliyah, which they complied with. When the families returned to Izbat Abd Rabbo on 18 January, they found the ambulance was in the same place but had been crushed, probably by a tank.

775. Inside the Abed Rabbo house, Amal and Souad died of their wounds. The family decided that they had to make an attempt to walk to Jabalya and take Samar, the dead bodies of Amal and Souad, and their grandmother to hospital. Khaled and Kawthar Abd Rabbo, and other family members and neighbours carried the girls on their shoulders. Hajja Souad was carried by family and neighbours on a bed. Samar was transferred to al-Shifa hospital and then, through Egypt, to Belgium, where she still is in hospital. According to her parents, Samar suffered a spinal injury and will remain paraplegic for the rest of her life.

776. When Khalid Abd Rabbo returned to his home on 18 January 2009, his house, as most houses in that part of Izbat Abd Rabbo, had been demolished. He drew the Mission's attention to an anti-tank mine under the rubble of a neighbour's house.[429]

10. Factual findings

777. The Mission found Khalid and Kawthar Abd Rabbo to be credible and reliable witnesses. It has no reason to doubt the veracity of the main elements of their testimony. The Mission also

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[429] The UNOSAT report (p. 14) counts 341 buildings in Izbat Abd Rabbo destroyed or severely damaged as a result of the military operations.

reviewed several sworn statements they and other eyewitnesses gave to NGOs about the incident and found them to be consistent with the account it received.

778. The Mission notes that, in general, Izbat Abd Rabbo and the nearby areas of Jabal al-Kashef and Jabal al-Rayes appear to have been among the locations in Gaza which saw the most intense combat during the military operations.[430] The testimony of Khalid and Kawthar Abd Rabbo, however, shows that the Israeli armed forces were not engaged in combat or fearing an attack at the time of the incident. Two soldiers were sitting on the tank in front of the Abd Rabbo family house and having a snack. They clearly did not perceive any danger from the house, its occupants or the surroundings. Moreover, when the family, consisting of a man, a young and an elderly woman, and three small girls, some of them waving white flags, stepped out of the house, they stood still for several minutes waiting for instructions from the soldiers. The Israeli soldiers could, therefore, not reasonably have perceived any threat from the group. Indeed, the fact that the gunfire was directed at the three girls and, subsequently, at the elderly woman, and not at the young adult couple, can be seen as further corroborating the finding that there was no reasonable ground for the soldier shooting to assume that any of the members of the group were directly participating in the hostilities. The Mission finds that the soldier deliberately directed lethal fire at Souad, Samar and Amal Abd Rabbo and at their grandmother, Hajja Souad Abd Rabbo.

779. The Mission further finds that, by preventing Sameeh al-Sheikh from taking the wounded to the nearest hospital in his ambulance, the Israeli armed forces deliberately further aggravated the consequences of the shooting. The Mission recalls that the soldiers had forced Sameeh al-Sheikh and his son to get out of the ambulance, undress and then re-dress. They therefore knew that they did not constitute a threat. Instead of allowing them to take the gravely wounded Samar Abd Rabbo to hospital, the soldiers forced Sameeh al-Sheikh and his son to abandon the ambulance and to walk towards Jabaliyah.

11. The shooting of Rouhiyah al-Najjar

780. The Mission visited the site of the shooting of Rouhiyah al-Najjar in Khuza'a. It interviewed two eyewitnesses of the shooting and six other witnesses to the events, including Yasmine al-Najjar, Nasser al-Najjar, Rouhiyah al-Najjar's husband, and their daughter Hiba.

781. The Israeli armed forces launched the attack against Khuza'a, a small town about half a kilometre from the border (Green Line) with Israel east of Khan Yunis, around 10 p.m. on 12 January 2009. During the night, they used white phosphorous munitions, causing fires to break out in the al-Najjar neighbourhood on the eastern fringe of Khuza'a. Families in the neighbourhood, including the family of Nasser al-Najjar, his first wife Rouhiyah and their daughter Hiba, spent much of the night trying to extinguish fires in their houses. Israeli armed forces, possibly heliborne troops, had taken position on the roofs of some houses in the neighbourhood and observed the residents as they attempted to fight the fires. Around 3 a.m. residents also began to hear the noise of approaching tanks and bulldozers, with which they were well familiar, as in 2008 there had been several Israeli incursions into the farmland to the north

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[430] "The hidden dimension of Palestinian war casualties …" suggests that these areas were among those in which Palestinian combatants most frequently engaged the Israeli armed forces.

and east of Khuza'a, in the course of which bulldozers flattened fields, groves, chicken coops and greenhouses.

782. In the early morning hours, some of the residents, including Rouhiyah al-Najjar, climbed on the roofs of their houses and hoisted improvised white flags. Using megaphones, the Israeli armed forces asked the men of the neighbourhood to come out of the houses and walk towards the tanks. There the men were separated into two groups which were then held in different houses under the control of the soldiers.

783. At some point between 7 and 7.45 a.m., Rouhiyah al-Najjar and the women in her immediate neighbourhood decided to leave their homes and walk with their children to the town centre. The group of women was headed by Rouhiyah al-Najjar and her 23-year-old neighbour and relative Yasmine al-Najjar, both carrying white flags. Rouhiyah's daughter Hiba was right behind her. Other women were holding up babies in their arms, shouting "God is great!" and "We have children!" The group of women and children started moving down a straight alley, about six or seven metres wide, flanked on both sides by houses. At the other end of the alley, a little more than 200 metres away,[431] was the house of Faris al-Najjar, which had been occupied by numerous Israeli soldiers (around 60 according to one witness). The soldiers had made a hole in the wall of the first floor of the house, giving them a good view down the alley into which the group of women and children were advancing. When Rouhiyah al-Najjar was about 200 metres from Faris al-Najjar's house, a shot fired from that house hit her in the temple (she had just turned her head towards her neighbour next to her to encourage her). Rouhiyah al-Najjar fell to the ground; Yasmine was struck in her leg. This single shot was followed by concentrated gunfire, which forced the group of women and children to scramble back into the houses of Osama al-Najjar and Shawki al-Najjar, though it did not cause further injury. Because of the fire from the Israeli soldiers, they did not dare to leave the house and look after Rouhiyah al-Najjar. They stayed inside until around noon the same day, when they made a second, successful attempt to leave the neighbourhood and walk to a safer part of Khuza'a.

784. An ambulance driver from Khan Yunis hospital, Marwan Abu Reda, received a phone call from Khuza'a asking for emergency help for Rouhiyah al-Najjar at around 7.45 a.m. He immediately drove to Khuza'a and arrived in the neighbourhood shortly after 8 a.m., i.e. within no more than an hour from the shooting. He was already in the alley where Rouhiyah al-Najjar was lying on the ground[432] when soldiers opened fire from houses or rooftops, forcing him to make a U-turn and take the ambulance to a nearby alley. He called PRCS and asked it to seek access to the injured woman, through ICRC and in coordination with the Israeli armed forces, without success. Marwan Abu Reda was not able to pick up Rouhiyah al-Najjar's (by then lifeless) body until the evening of that day. He confirmed to the Mission that she had received a bullet in the temple.

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[431] The Mission did not measure the distance; this is an estimate.

[432] The Mission does not have information which would allow it to state whether Rouhiyah al-Najjar was still alive when the ambulance arrived.

12. Factual findings

785. The Mission has no reason to doubt the veracity of the main elements of the testimony of the witnesses it heard with regard to the shooting of Rouhiyah al-Najjar.

786. The Mission's site inspection and the testimony of several witnesses appear to establish that the group of women and children led by Rouhiyah al-Najjar had slowly walked for at least 20 metres before the shot that killed Rouhiyahher was fired. During that time, Israeli soldiers standing on the roofs of the houses in the neighbourhood had ample time to observe the group. The fact that, after shooting Rouhiyah and Yasmine al-Najjar, the soldiers directed warning fire at the group without injuring anyone, but forcing them to retreat to a house, is further indication that the soldiers had not observed any threat to them from the group.[433] Indeed, a few hours later the same group was allowed to walk past the soldiers to a safer area of Khuza'a. The Mission accordingly finds that Rouhiyah al-Najjar was deliberately shot by an Israeli soldier who had no reason to assume that she was a combatant or otherwise taking part in hostilities.

787. The Mission also observes that, while it is unclear whether the ambulance from Khan Yunis hospital could have saved Rouhiyah al-Najjar's life, the Israeli forces prevented the evacuation of the wounded woman without any justification.

13. The Abu Halima family case

788. The Mission interviewed three members of the Abu Halima family who were eyewitnesses to the events described below.[434] The Mission also spoke to the doctor who treated some of the family members.[435] The Mission reviewed a report by Physicians for Human Rights – Israel and Palestinian Medical Relief Society which includes analysis by doctors who observed the wounds of the surviving victims at the beginning of March 2009 and also has medical reports confirming the injuries they suffered.[436] Finally, the Mission reviewed information received from TAWTHEQ.

789. On 3 and 4 January 2009, the initial days of the ground invasion, there was heavy aerial bombardment and shelling by tanks of the open areas around Siyafa village, in al-Atatra neighbourhood west of Beit Lahia. Most residents are farmers and, although the Israeli armed

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[433] The Mission was not given any testimony about the presence of Palestinian combatants in Khuza'a at the time of this incident. In fact, Khuza'a municipal officials expressly denied that there was any combatant activity in Khuza'a at the time of the Israeli ground invasion, arguing that, Khuza'a and the surrounding fields being such an open area, there was no place for fighters to take cover. These statements are contradicted by reports indicating that "about one dozen fighters had directly engaged the IDF in Khuza'a. But these engagements appear to have been minimal, with the fighters mostly retreating whenever the Israeli forces advanced." (Human Rights Watch, *Rain of Fire: Israel's Unlawful Use of White Phosphorous in Gaza* (March 2009), pp. 53-54).

[434] Mission interviews with Sabah Abu Halima (aged 45), Muhammad Sa'ad Abu Halima (aged 24), Omar Sa'ad Abu Halima (aged 18), 15 June 2009.

[435] Mission interview with Dr. Nafeez, the burns expert from al-Shifa hospital, 12 June 2009.

[436] Physicians for Human Rights-Israel and Palestinian Medical Relief Society, "Final report: Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.08-18.01.09", pp. 51-55, available at: http://www.phr.org.il/phr/files/articlefile_1241949935203.pdf.

forces had dropped leaflets warning civilians to leave the area, most had chosen to stay. Based on their previous experiences of ground invasions, they reportedly believed that they were not in danger.

790. On 4 January 2009, the bombardment reportedly increased as Israeli troops moved into and took control of al-Atatra neighbourhood. The Abu Halima family was sheltering in the home of Muhammad Sa'ad Abu Halima and Sabah Abu Halima in Sifaya village. The house has two floors; the ground floor is used for storage and the living quarters are on the upper floor. According to Sabah Abu Halima,[437] 16 members of her immediate family were sheltering on the upper floor.

791. In the afternoon, after hearing that a shell had hit the adjacent house of Sabah Abu Halima's brother-in-law, most of the family moved from the bedroom into a hallway in the middle of the upper floor, where they thought they would be better protected. At around 4.30 p.m., a white phosphorous shell came through the ceiling into the room where they were sheltering.

792. According to family members who survived,[438] there was intense fire and white smoke in the room, the walls of which were glowing red. Five members of the family died immediately or within a short period: Muhammad Sa'ad Abu Halima (aged 45) and four of his children, sons Abd al-Rahim Sa'ad (aged 14), Zaid (aged 12) and Hamza (aged 8), and daughter Shahid (aged 18 months). Muhammad Sa'ad and Abd al-Rahim Sa'ad were decapitated, the others burnt to death. Five members of the family escaped and suffered various degrees of burns: Sabah Abu Halima, her sons Youssef (aged 16) and Ali (aged 4), daughter-in-law Ghada (aged 21), and Ghada's daughter Farah (aged 2).[439]

793. Family members tried to call an ambulance, but the Israeli armed forces had declared the area a closed military zone and ambulances were not permitted to enter. Two cousins put Sabah Abu Halima in the back of a tractor trailer and drove her to Kamal Idwan hospital in Beit Lahia. The driver reported that he reached the hospital despite coming under fire from Israeli soldiers posted inside the Omar Bin Khattab school for girls on the road to al-Atatra.[440] One cousin remained with Sabah Abu Halima, while the other returned to help the rest of the family.

794. The remaining survivors and the injured were placed on a second tractor trailer to take them to Kamal Idwan hospital. The remains of Shahid Abu Halima were also taken. The tractor was driven by a cousin, Muhammad Hekmat Abu Halima (aged 16). Another cousin, Matar Abu Halima (aged 17), his brother Ali (aged 11) and his mother, Nabila, accompanied them.

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[437] Statement by Sabah Abu Halima to the Mission on 15 June 2009.

[438] Statements by Sabah Abu Halima, Muhammad Sa'ad Abu Halima and Omar Sa'ad Abu Halima to the Mission on 15 June 2009.

[439] Given the seriousness of their injuries, Sabah, Farah and Ghada Abu Halima were transferred to Egypt for treatment. Ghada died there in late March 2009.

[440] www.dci-pal.org/English/Doc/Press/Case-Study_Cast-Lead_Abu-Halima_Family_FINAL.pdf.

795. When they reached the crossroads next to the Omar Bin Khattab school in al-Atatra, Israeli soldiers positioned on the roof of a nearby house, some ten metres away, ordered them to stop. Muhammad Hekmat, Matar, Ali, Nabila and Matar got down and stood beside the tractor. One or more soldiers opened fire, hitting Muhammad Hekmat Abu Halima in the chest and Matar Abu Halima in the abdomen.[441] Both died as a result of their injuries. Ali, Omar and Nabila Abu Halima fled. Omar was shot in the arm, but they eventually reached Kamal Idwan hospital.

796. The remaining family members were ordered to abandon the tractors and walk. They were not permitted to take the bodies of the two dead boys, or the remains of Shahid Abu Halima, which were recovered four days later, on 8 January. Ghada Abu Halima, who had burns on 45 per cent of her body, had great difficulty walking. After some 500 metres, a vehicle picked up several members of the family, including Ghada and Farah, and took them to al-Shifa hospital in Gaza City.

797. Dr. Nafiz Abu Shaban, Chief of Plastic Surgery at al-Shifa hospital, confirmed that Sabah, Ghada and Farah Abu Halima were admitted there with serious burns and were transferred to Egypt for treatment. The doctor believed that the burns were caused by contact with white phosphorous.[442]

14. Factual findings

798. The Mission found Sabah Abu Halima, Muhammad Sa'ad Abu Halima and Omar Sa'ad Abu Halima to be credible and reliable witnesses. It has no reason to doubt the veracity of the main elements of their testimonies, which were corroborated by the testimony of Dr. Nafiz Abu Shaban of al-Shifa hospital.

799. With regard to the white phosphorous shelling of the Abu Halima family house, the Mission notes that the house is located in a village in a rural area. The shelling occurred on 4 January 2009 at a time when Israeli ground forces were apparently advancing into al-Atatra. Moreover, the Israeli armed forces had dropped leaflets warning civilians to leave. Under the circumstances, the Mission cannot make any determination as to whether the shelling of the Abu Halima house was a direct attack against a civilian objective, an indiscriminate attack or a justifiable part of the broader military operation.

800. With regard to the shooting of Muhammad Hekmat Abu Halima and Matar Abu Halima, the Mission notes that the Israeli soldiers had ordered the tractor on which they were transporting the wounded to stop and had ordered the two cousins (aged 16 and 17) to come down. They had complied with those instructions and were standing next to the tractor, when the Israeli soldiers standing on the roof of a nearby house opened fire on them. The soldiers cannot have been mistaken about the circumstance that these were two civilians taking gravely wounded persons to a hospital. The shooting of Muhammad Hekmat Abu Halima and Matar Abu Halima was a direct

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[441] According to statements given by Omar and Nabila Abu Halima to the NGO Defence for Children International (ibid.). Information provided to the Mission by Omar Abu Halima on 15 June 2009 was less detailed but consistent with this information.

[442] Mission interview, 12 June 2009.

lethal attack on two under-age civilians. The fact that they were hit in the chest and the abdomen, respectively, indicates that the intention was to kill them.

801. The Mission further notes that in this case the Israeli armed forces denied the ambulances access to the area to evacuate the wounded and then opened fire on the relatives of the wounded who were trying to take them to the nearest hospital.

C. Information concerning the instructions given to the Israeli armed forces with regard to the opening of fire against civilians

802. The Mission found in the above incidents that the Israeli armed forces repeatedly opened fire on civilians who were not taking part in the hostilities and who posed no threat to them. These incidents indicate that the instructions given to the Israeli armed forces moving into Gaza provided for a low threshold for the use of lethal fire against the civilian population. The Mission found strong corroboration of this trend emerging from its fact-finding in the testimonies of Israeli soldiers collected by the Israeli NGO Breaking the Silence[443] and in the Protocol of the Rabin Academy's "Fighters' Talk". These testimonies suggest in particular that the instructions given to the soldiers conveyed two "policies". Both are an expression of the aim to eliminate as far as possible any risk to the lives of the Israeli soldiers.

803. The first policy could be summarized, in the words of one of the soldiers: "if we see something suspect and shoot, better hit an innocent than hesitate to target an enemy." Another soldier attributed the following instructions to his battalion commander: "If you are not sure – shoot. If there is doubt then there is no doubt." The first soldier summarized the briefing from the battalion commander as follows "the enemy was hiding behind civilian population. […] if we suspect someone, we should not give him the benefit of the doubt. Eventually, this could be an enemy, even if it's some old woman approaching the house. It could be an old woman carrying an explosive charge." A third soldier explained "you don't only shoot when threatened. The assumption is that you constantly feel threatened, so anything there threatens you, and you shoot. No one actually said 'shoot regardless' or 'shoot anything that moves.' But we were not ordered to open fire only if there was a real threat."[444]

804. The Mission notes that some soldiers stated that they agreed with the instructions to "shoot in case of doubt." One of them explained "this is the difference between urban warfare and a limited confrontation. In urban warfare, anyone is your enemy. No innocents." Another told of his profound discomfort with the policy and of how he and his comrades had attempted to question their commander about it after a clearly harmless man was shot.[445] While they disagreed about the legitimacy and morality of the policy, they had little doubt about the terms of the instructions: each soldier and commander on the ground had to exercise judgement,[446] but the policy was to shoot in case of doubt.

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[443] *Soldiers' Testimonies….*

[444] Ibid., testimony 21, pp. 50–51, testimony 7, p. 20, and testimony 9, p. 24.

[445] Ibid., testimony 7, p. 20, and testimony 14, pp. 38-39.

[446] Ibid., testimony 13, p. 37.

805. The second policy clearly emerging from the soldiers' testimonies is explained by one of the soldiers as follows: "One of the things in this procedure [the outpost procedure, which is being applied in areas held by the Israeli armed forces after the Gaza ground invasion] is setting red lines. It means that whoever crosses this limit is shot, no questions asked. […] Shoot to kill."[447] In one incident highly relevant to the cases investigated by the Mission because of factual similarities, a soldier recounted an event he witnessed.[448] A family is ordered to leave their house. For reasons that remain unclear, probably a misunderstanding, the mother and two children turn left instead of right after having walked between 100 and 200 metres from their house. They thereby cross a "red line" established by the Israeli unit (of whose existence the mother and children could have no knowledge). An Israeli marksman on the roof of the house they had just left opens fire on the woman and her two children, killing them. As the soldier speaking at the Rabin Academy's "Fighters' Talk" a month later observes, "from our perspective, he [the marksman] did his job according to the orders he was given".

806. "Incessant" alerts about suicide bombers[449] meant that even civilians clearly identified by the soldiers as carrying no arms were perceived as a threat as soon as they came within a certain distance from the soldiers – a threat to be eliminated, also without warning fire, as a second might be enough for the "suicide bomber" to get close enough to harm the soldiers.

807. The Mission notes that many of the persons interviewed in Gaza described incidents in which they were, individually, as part of a group or in a vehicle, exposed to intense gunfire from Israeli soldiers – but without being hit or injured. This was the case, for instance, of an ambulance drivers attempting to drive into an area which the Israeli armed forces had decided he should not enter.[450] In the Khuza'a case, after the lethal shooting of Rouhiyah al-Najjar and wounding of Yasmine al-Najjar, the other women and children were exposed to fire from the Israeli soldiers, which forced them to retreat to the houses they had been trying to leave.[451] These incidents suggest that the Israeli armed forces made ample use of gunfire to "communicate" with the civilian population, to issue injunctions to civilians not to walk or not to drive any further in a certain direction or to immediately retreat to a building they were about to leave. The terrifying effect this sort of non-verbal communication had on those at the receiving end is evident, as is the likelihood of lethal consequences.

808. The Mission also read testimony from soldiers who recounted cases in which, although a civilian had come within a distance from them which would have required opening fire under the rules imparted to them, they decided not to shoot because they did not consider the civilian a threat to them.

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[447] Ibid., testimony 12, p. 32, also testimony 21, p. 52; and the of "Ram" in the Rabin Academy Fighters' Talk, pp. 6-7.

[448] Testimony of "Ram" in the Rabin Academy Fighters' Talk, pp. 6-7. The Mission notes that "Ram" clearly states that he was an eyewitness to the incident.

[449] For instance, *Soldiers' Testimonies…*, testimony 13, p. 37, and testimony 22, p. 53.

[450] Interview with Marwan Abu Reda, 11 June 2009. For a description of warning shots in front of moving vehicles, see *Soldiers' Testimonies…*, testimony 12, p. 33.

[451] This would appear to have been the case also in the shooting of Majda and Rayya Hajaj in Juhr ad-Dik.

D. Legal findings with regard to the cases investigated by the Mission

809. The fundamental principles applicable to these incidents, which are cornerstones of both treaty-based and customary international humanitarian law, are that "the parties to the conflict shall at all times distinguish between the civilian population and combatants"[452] and that "the civilian population as such, as well as individual civilians, shall not be the object of attack".[453] The Israeli Government refers to the principle of distinction as "the first core principle of the Law of Armed Conflict." It further states that "the IDF's emphasis on compliance with the Law of Armed Conflict was also directly incorporated into the rules of engagement for the Gaza Operation." The principle of distinction was reportedly incorporated in the following terms: "Strikes shall be directed against military objectives and combatants only. It is absolutely prohibited to intentionally strike civilians or civilian objects (in contrast to incidental proportional harm)."[454]

810. In reviewing the above incidents the Mission found in every case that the Israeli armed forces had carried out direct intentional strikes against civilians. The only exception is the shelling of the Abu Halima family home, where the Mission does not have sufficient information on the military situation prevailing at the time to reach a conclusion.

811. The Mission found that, on the basis of the facts it was able to ascertain, in none of the cases reviewed were there any grounds which could have reasonably induced the Israeli armed forces to assume that the civilians attacked were in fact taking a direct part in the hostilities and had thus lost their immunity against direct attacks.[455]

812. The Mission therefore finds that the Israeli armed forces have violated the prohibition under customary international law and reflected in article 51 (2) of Additional Protocol I that the civilian population as such will not be the object of attacks. This finding applies to the attacks on the houses of Ateya and Wa'el al-Samouni, the shooting of Iyad al-Samouni, of Shahd Hajji and Ola Masood Arafat, of Ibrahim Juha, of Rayya and Majda Hajaj, of Amal, Souad, Samar, and Hajja Souad Abd Rabbo, of Rouhiyah al-Najjar, and of Muhammad Hekmat Abu Halima and Matar Abu Halima. In these incidents, 34 Palestinian civilians lost their lives owing to Israeli fire intentionally directed at them. Numerous others were injured, some very severely and with permanent consequences.

813. Not only are civilians not to be the object of attacks, they are also "entitled in all circumstances, to respect for their persons … protected especially against all acts of violence or threats thereof" (Fourth Geneva Convention, art. 27). Fundamental guarantees set out in article 75 of Additional Protocol I include the absolute prohibition "at any time and in any place" of "violence to the life, health, or physical or mental well-being of persons". According to the facts presented to the Mission, these provisions have been violated.

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[452] Additional Protocol I, art. 48.

[453] Additional Protocol I, art. 51 (2).

[454] "The operation in Gaza…", paras. 94 and 222.

[455] Pursuant to article 51 (3) of Protocol Additional I, civilians enjoy immunity from attack "unless and for such time as they take a direct part in hostilities." On the status of this rule in customary law, see chap. VII.

814. The State of Israel would be responsible under international law for these internationally wrongful actions carried out by its agents

815. From the facts ascertained, the Mission finds that the conduct of the Israeli armed forces in these cases would constitute grave breaches of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons[456] and as such give rise to individual criminal responsibility.

816. The Mission also finds that the direct targeting and arbitrary killing of Palestinian civilians is a violation by the Israeli armed forces of the right to life as provided in article 6 of the International Covenant on Civil and Political Rights.

817. In most of the cases examined above, the Mission finds that the Israeli armed forces denied the medical emergency services access to the wounded civilians. This was the case with regard to all the incidents occurring in the al-Samouni neighbourhood, particularly after the shooting of Ahmad al-Samouni, where the PRCS ambulance was forced to return to Gaza City having come within 100 metres of the gravely wounded boy. Ambulances were also arbitrarily prevented from reaching the wounded after the attack on Wa'el al-Samouni's house, most dramatically after the shooting of Amal, Souad, Samar, and Hajja Souad Abd Rabbo and of Rouhiyah al-Najjar. In the case of the shooting of Muhammad Hekmat Abu Halima and Matar Abu Halima, it is the rescuers who were executed, preventing them from taking their severely burned relatives to hospital. In the case of Iyad al-Samouni, finally, the relatives who wanted to assist him were threatened with being shot themselves.

818. The Mission recalls that article 10 (2) of Additional Protocol I provides that "In all circumstances [the wounded] shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. …" This provision enjoys customary international law status. The Mission is mindful that "the obligation to protect and care for the wounded … is an obligation of means." It applies whenever circumstances permit. However, "each party to the conflict must use its best efforts to provide protection and care for the wounded,… . including permitting humanitarian organizations to provide for their protection and care."[457]

819. The facts ascertained by the Mission establish that in the incidents investigated the Israeli armed forces did not use their best efforts to provide humanitarian organizations access to the wounded. On the contrary, the facts indicate that, while the circumstances permitted giving access, the Israeli armed forces arbitrarily withheld it.

820. On this basis, the Mission finds a violation of the obligation under customary international law to treat the wounded humanely.

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[456] Article 147 of the Fourth Geneva Convention defines the "wilful killing" of protected persons as a grave breach of the Convention. The same qualification is applied to acts which "wilfully caus[e] great suffering or serious injury to body or health".

[457] *Customary International Humanitarian Law*…, rule 110 and p. 402.

821. The conduct of the Israeli armed forces amounted to violations of the right to life where it resulted in death, and to a violation of the right to physical integrity, and to cruel and inhuman treatment in other cases, which constitutes a violation of articles 6 and 7 of the International Covenant on Civil and Political Rights.

E. The attack on the al-Maqadmah mosque, 3 January 2009

1. The facts gathered by the Mission

822. The al-Maqadmah mosque is situated near the north-west outskirts of Jabaliyah camp, close to Beit Lahia. It is located less than 100 metres from the Kamal Idwan hospital, in the al-Alami housing project. At least 15 people were killed and around 40 injured – many seriously – when the Israeli armed forces struck the entrance of the mosque with a missile.

823. The Mission heard five eyewitnesses who had been in the mosque at the time it was struck. Two of them had been facing the door as the explosion occurred. Three of them had been kneeling facing the opposite direction and had been seriously injured. The Mission also heard from a number of relatives of those who died in the attack and has seen a number of sworn statements signed by them testifying to the facts they witnessed.[458] The Mission also heard again from three witnesses it had interviewed earlier at the public hearings in Gaza. Finally, the Mission reviewed information received from TAWTHEQ.

824. On the evening of 3 January 2009, between 5 and 6 p.m., a large number of people had gathered in the mosque for evening prayers. Witnesses indicate that between 200 and 300 men had gathered on the first floor.[459] A number of women had also congregated in the basement at that time. Witnesses explained that in time of fear or emergency it was the tradition to combine sunset and evening prayers.[460] In addition, the Mission heard that while some time normally elapses between the muezzin calling the faithful to prayer and the prayers beginning, at this time it was the practice to begin prayers almost immediately.

825. The witnesses indicated that prayers had ended and the sermon was just beginning. At that point there was an explosion in the doorway to the mosque. One of the two wooden doors was blown off its hinges and all the way across the prayer area to the opposite wall.

826. As a result of the explosion at least 15 people died. Almost all were inside the mosque at the time. One of the casualties was a boy who had been sitting at the entrance. His leg was blown off by the missile strike and found afterwards on the roof of the mosque. A large number, around 40, suffered injuries. Many were taken to the Kamal Idwan hospital for treatment.

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[458] Note, for example, the affidavit of Ismail al-Salawi, brother of the sheikh at the mosque. He recounts how he was on his way to the mosque when his 13-year-old daughter ran towards him screaming that it had been bombed. He rushed in to find a scene of bloody chaos. As an immediate result of the strike his grandson Muhammad (13 years old), his nephews Hani (8 years old) and Omar (27 years old) were killed. See also a similar explanation of events by Ayisha Ibrahim, whose husband, Abdul Rahman (46), and son Ra'id were killed in the attack.

[459] Sheikh al-Salawi, interviewed on 3 June 2009 and 4 July 2009.

[460] See, for example, Sheikh al-Salawi at the public hearing in Gaza on 27 July 2009, available at http://www.realnetworks.com

827. On visiting the mosque, the Mission was able to observe the damage done to it. Its immediate entrance is on a raised level from the external pavement and is reached via a ramp. There are a number of stairs below the doorway, now covered by the raised entrance at the end of the ramp. The stairs underneath the ramp were damaged and the concrete had been pierced. There was a scorch mark on the ground and stairs.

828. The Mission has also viewed a number of photographs taken shortly after the strike and considers them to be reliable. They showed that something had penetrated the concrete (about three inches thick) immediately outside of the mosque doorway and then hit the pavement at the bottom of the stairs below the concrete covering. The ramp and entrance level structure had a wall about one metre high built on its outer side. The part of the wall opposite the mosque door was blown away.

829. The Mission observed that the interior walls of the mosque and part of the exterior wall around the doorway appeared to have suffered significant damage as a result of a spray of small metal cubes. A good number of these were lodged in the wall even at the time of the Mission's visit to the site in June 2009. Several of these were retrieved and the Mission could see how deeply embedded they were in the concrete walls.

830. Apart from the aforementioned visit to the mosque, the Mission has interviewed its sheikh on three occasions, its imam twice, its muezzin, several members of the sheikh's family, several of those injured in the blast and a number of the relatives who lost family members and who assisted in the immediate aftermath of the attack. It has seen medical certificates that bear out the nature of those injuries related by the young men it interviewed. The Mission questioned all of the witnesses and sought to clarify any doubts it may have had.

2. The position of the Israeli Government and the Israeli armed forces

831. The Israeli armed forces' response to the allegations states:

> … relating to a strike against the "Maqadme" mosque in Beit-Lahiya on January 3rd, 2009, it was discovered that as opposed to the claims, the mosque was not attacked at all. Furthermore, it was found that the supposed uninvolved civilians who were the casualties of the attack were in fact Hamas operatives killed while fighting against the IDF.[461]

832. Apart from the apparent contradictions it contains, the Mission notes that the statement does not indicate in any way the nature of the inquiry, the source of its information or the reliability and credibility of such sources.

833. In July 2009 the Israeli Government repeated the same position.[462]

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[461] "Conclusions of investigations into central claims and issues in Operation Cast Lead", 22 April 2009, annex C. The document was approved and authorized by the Chief of the General Staff Lt. Gen. Gabi Ashkenazi. It is available at: http://dover.idf.il/IDF/English/opcast/postop/press/2201.htm

[462] "The operation in Gaza…".

3. Factual findings

834. The Mission has established that the Israeli armed forces fired a missile that struck near the doorway of the mosque. The penetration pattern witnessed on the concrete ramp and stairs underneath is consistent with that which would be expected of a shrapnel fragmentation sleeve fitted onto an air-to-ground missile. Shrapnel cubes that the Mission retrieved from the rear inside wall of the mosque are consistent with what would be expected to be discharged by a missile of this nature.[463]

835. The strike killed at least 15 people attending the mosque for prayers and very seriously injured several others.

836. The Mission is not in a position to say from which kind of aircraft or air-launch platform the missile was fired. It believes the testimony of the witnesses regarding the circumstances of the attack, finding it plausible and consistent not only with the other witnesses, but also with the physical evidence at the scene. The Mission also notes that a number of local organizations sent representatives to the site of the attack very shortly after it occurred and they witnessed the scene for themselves. The Mission has also spoken with them and notes that their accounts are consistent with the testimony provided by the witnesses it heard.

837. There has been no suggestion that the al-Maqadmah mosque was being used at that time to launch rockets, store weapons or shelter combatants.[464] Since it does not appear from the testimonies of the incident or the inspection of the site that any other damage was done in the area at that time, the Mission concludes that what occurred was an isolated strike and not in connection with an ongoing battle or exchange of fire.

4. Legal findings

838. In the absence of any explanation as to the circumstances that led to the missile strike on al-Maqadmah mosque and taking into account the credible and reliable accounts the Mission heard from multiple witnesses, as well as the matters it could review for itself by visiting the site, the Mission concludes that the mosque was intentionally targeted by the Israeli armed forces. The Mission also takes into account the precision and sophistication of the Israeli armed forces' munitions in making this finding.

839. The Mission's finding is strengthened in the face of the unsatisfactory and demonstrably false position of the Israeli Government.

840. It follows that this was an attack on the civilian population as such and not on a military objective.

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[463] The Mission considers it possible in analysing the information available that the missile in question may have been a modified high-explosive anti-tank missile, sometimes referred to as either augmented high-explosive anti-tank (AHEAT) or high-explosive dual-purpose (HEDP).

[464] See, for example, statements made by Israel in "The operation in Gaza…", para. 234.

841. Based on the facts ascertained, the Mission finds that the Israeli armed forces have violated the prohibition under customary international law that the civilian population as such will not be the object of attacks as reflected in article 51 (2) of Additional Protocol I.

842. Based on those facts, the violations also constitute a grave breach of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons.

843. The Mission also finds that the State of Israel would be responsible for the arbitrary deprivation of the right to life, in relation to article 6 of the International Covenant on Civil and Political Rights, of those killed.

F. The attack on the al-Daya family house, 6 January 2009

1. The facts gathered by the Mission

844. On 6 January 2009, the al-Daya Family house located on al-Rai'i Street in Zeytoun, south-east of Gaza City, was struck by a projectile fired from an F-16 aircraft which killed 22 members of the family. Twelve of those killed were children under 10.

845. In June 2009, the Mission visited the site of the incident where it interviewed two of the four surviving members from the al-Daya family and a number of local residents.[465] Further inquiries and interviews were conducted in late July with neighbours of the al-Daya family.

846. The al-Daya house was a four-storey building with seven apartments owned by Fayez Musbah al-Daya. Each apartment was occupied by one of his seven sons, some married and living with their own families, and two unmarried daughters.

847. The Israeli armed forces reached Zeytoun on 3 January. Witnesses interviewed by the Mission said that the Israeli armed forces dropped leaflets in the area instructing people not to support Hamas and to provide the Israeli armed forces with information, at a given number, on military activities in the neighbourhood, including details of weapon facilities.[466]

848. Witnesses mentioned that a rumour had circulated that the Israeli forces were going to bomb a house in the neighbourhood, which led several families to leave their homes.[467] A few families chose to stay, including the remaining members of the al-Daya family and five other families.[468]

849. On the morning of 6 January, at around 5.35 a.m. a missile was reportedly fired in the vicinity of the al-Daya house, close to the Hassan al-Banna mosque, which killed an elderly man. Witnesses stated that the strike occurred shortly after the morning prayers had ended and when the man was on his way home. The same witnesses confirmed that the death of the man in

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[465] Muhammad Fayez al-Daya, Rida Fayez al-Daya, Aimer al-Daya and Hafez al-Daya.

[466] Mission interviews with Muhammad Salam al-Ra'i, Deeb al-Ra'i, Faraj al-Ra'i and Rida al-Daya, July 2009.

[467] Those who left included the eldest son of the al- Daya family, Nafez al-Daya, his wife and seven children.

[468] The families of Zuher al-Ra'i (an estimated 16 people), Faraj al-Ra'i (an estimated 15 people), Jumaa al-Ra'i (an estimated 7 people), Mahmoud al-Hindi (an estimated 4 people) and Shawqi Sa'd.

question was caused not by a bullet but by a small missile. Approximately 10 minutes later, at around 5.45 a.m. the al-Daya family house was hit by a projectile from an F-16 aircraft.

850. Twenty-two members of the al-Daya family inside the house were killed.[469]

851. The Mission interviewed a number of neighbours. Each one of them said they had not received any warning call from the Israeli forces prior to the strike on the al-Daya house and confirmed that no other house in the street was struck after the al-Daya house had been hit.

852. Owing to the location of the house and the narrow street access it took several hours before neighbours were able to dig through the rubble. One brother, Radwan al-Daya, was pulled out of the debris alive and taken to the hospital with the help of a PRCS worker who lived near the al-Daya house. He died three days later having suffered severe asphyxiation. Several bodies were recovered only after the withdrawal of the Israeli armed forces.

2. The Israeli position

853. On 22 April 2009 the Israeli armed forces issued the following statement:

> […] The Al-Daia family residence in the Zeitoun neighbourhood in the city of Gaza (January 6th, 2009) – the incident in question was a result of an operational error with unfortunate consequences. The investigation concluded that the IDF intended to attack a weapons storage facility that was located in the building next to the Al-Daia family residence. It appears that following an error, the structure that was planned to be attacked was the Al-Daia residence rather than the building containing the weapons.[470]

854. In July 2009 the Israeli Government stated the following:

> The IDF has concluded that this tragic event was the result of an operational error. An investigation determined that the IDF intended to strike a weapons' storage facility located in a building next to this residence. However, the IDF erroneously targeted the Al-Daia residence, rather than the weapons storehouse. Although the IDF did provide warning shots to the roof of the Al-Daia residence, other warnings (such as the warning phone call) were made to the building *actually* containing the weapons, not the Al-Daia residence.
>
> The IDF is examining how the unfortunate operational error occurred, in order to reinforce safeguards and to prevent its recurrence. Israel deeply regrets the tragic outcome. This is the kind of mistake that can occur during intensive fighting in a crowded environment, against an enemy that uses civilian neighbourhoods as cover for its operations. IDF forces did not intentionally target civilians. This lack of unlawful intent

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[469] These included the wife of Muhammad al-Daya (one of the surviving family members), their three daughters and one son, all under seven, who were crushed under the rubble of the house. Most of them were asleep at the time of the attack. Others killed included Fayez al-Daya and his wife; Iyad al-Daya and his wife Rawda, their three daughters and three sons, all under 10; Ramez al-Daya, his wife Safa, and their six-month-old daughter and two-year-old son; two sisters, Raghdah and Sabrine, and Radwan al-Daya.

[470] "Conclusions of investigations…", annex C.

has been a critical factor, in past incidents involving operational mistakes by other armies (such as NATO's erroneous bombing of the Chinese Embassy in the former Yugoslavia), in determining that no violation of the Law of Armed Conflict occurred. Similarly, although its attack on the Al-Daia residence was a tragic error, it did not constitute a violation of the laws of war.[471]

3. Factual findings

855. Israel's position is that the al-Daya house was destroyed as a result of an "operational error" made at some point in the planning of the operation. It says the target that should have been hit was a neighbouring house storing weapons. The Mission has interviewed the residents of the neighbouring houses and visited the site. No neighbouring house was attacked at any time after the al-Daya house was destroyed. The Mission finds it difficult to understand how a target apparently important enough to be targeted for such definitive destruction in the first place, as a result of what it apparently contained, could then remain free from attack for the remaining 12 days of the land operation.

856. The Mission is unable to verify claims that a warning was given by means of firing a small missile to the roof as the house was destroyed and the residents killed. Local witnesses have reported that a small missile did appear to strike an elderly man in the neighbourhood about 10 minutes before the al-Daya house was destroyed but the Mission is not in a position to say whether this is likely to have been an errant warning shot.

857. The Israeli authorities have not indicated with any precision which house they called but the claim that a warning call was made to the house that allegedly contained weapons has been denied by all local residents. No such call was received by anyone in the houses neighbouring the al-Daya house.

858. In these circumstances there are significant doubts about the Israeli authorities' account of the incident and what has been offered to date does not in the view of the Mission constitute an explanation.

859. Besides the main difficulties mentioned above, there are a number of issues that could have been easily clarified but were not. The precise nature of the operational error remains unclear, as does the time it occurred and who was responsible for it. Similarly, it would appear that the warnings system failed at various points: the Government of Israel reports that a warning was given on the basis that it believed there was a house storing weapons. Given the power of the projectile that destroyed the four-storey al-Daya building, the Mission wonders what the consequences would have been if the projectile had in fact struck a weapons store, yet there is no suggestion by the Israeli authorities of a warning having been given to neighbouring houses that secondary explosions were possible. Not only does it appear that the wrong warnings were given to the wrong people, but if the existence of the storage facility is to be believed at all, it would also appear that the apparently feasible step of warning locals of entirely foreseeable danger was not taken either.

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[471] "The operation in Gaza…", paras. 386-387.

860. The Mission finds the version of events offered so far by Israel to be unsatisfactory. The details given are not sufficient to clarify the nature of the very serious error that has been made, if it was an error. In so far as any explanation has been given, it appears to lack coherence and raises more questions than it answers.

4. Legal findings

861. In the absence of information necessary to determine the precise circumstances of the incident, the Mission can make no findings on possible violations of international humanitarian law or international criminal law. If indeed a mistake was made and the intention was to destroy a house nearby rather than to kill the al-Daya family, there could not be said to be a case of wilful killing as the requisite degree of criminal intent would not have been established on the part of the individuals responsible.[472]

862. However, the issue of State responsibility remains. The International Law Commission's articles on the responsibility of States for internationally wrongful acts[473] are silent on whether such a mistake relieves a State of its international responsibility for the commission of an internationally wrongful act and the requirement of fault in international law is controversial. In a commentary on the articles, Crawford and Olleson consider that "if a State deliberately carries out some specific act, there is less room for it to argue that the harmful consequences were unintended and should be disregarded. Everything depends on the specific context and on the content and interpretation of the obligation said to have been breached".[474]

863. The obligation breached in this case is the duty to ensure the general protection of the civilian population against the dangers arising from military operations, as reflected in article 51 (1) of Additional Protocol I.

864. The firing of the projectile was a deliberate act in so far as it was planned, by Israel's admission, to strike the al-Daya house. The fact that target selection had gone wrong at the planning stage does not strip the act of its deliberate character. The consequences may have been unintended; the act was deliberate. Taken together with further facts (such as the failure to deliver an effective warning) and the nature of the "intransgressible obligation" to protect civilian life, the Mission considers that, even if a fault element is required, the available information demonstrates a substantial failure of due diligence on the part of Israel. As such, the Mission considers Israel to be liable for the consequences of this wrongful act.

865. The Mission finds that Israel's lack of due diligence in this case also constitutes a violation of the right to life as set out in article 6 of the International Covenant on Civil and Political Rights, to which Israel is a party. The right to life includes the negative obligation to respect life and the positive obligation to protect life. The Human Rights Committee has stated that States parties should take measures not only to prevent and punish deprivation by criminal

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[472] See, for example, article 32 of the Rome Statute.

[473] Annexed to General Assembly resolution 56/83.

[474] J. Crawford and S. Olleson, "The nature and forms of international responsibility", in *International Law*, M. Evans, ed. (Oxford, Oxford University Press, 2003).

acts, but also to prevent arbitrary killing by their own security forces.[475] No exception is made for acts during war.

866. The right to life also includes a procedural component that requires adequate investigation of any alleged violation "promptly, thoroughly and effectively through independent and impartial bodies" for "failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant."[476] The investigation of the Israeli armed forces referred to above lacks transparency and credibility. The failure of Israel to comply with the procedural requirement adds to the frustration and anger felt by survivors, who have received no credible explanation for what occurred.

G. Attack on the Abd al-Dayem condolence tents

1. The facts gathered by the Mission

867. On 4 January 2009 the Israeli armed forces struck an ambulance in the Beit Lahia area with a flechette missile as it was attending a number of wounded persons who had been hit in an earlier attack. Those wounded in the first attack had also been hit by a flechette missile. As a result of the attack on the ambulance, one of the first-aid volunteers in the ambulance crew, Arafa Abd al-Dayem, suffered severe injuries. He died later the same afternoon.

868. The following day, as is the custom, the family set up condolence tents where family and friends would pay their respects and comfort the grieving relatives. The family home is in Izbat Beit Hanoun, a built-up area in the north-east corner of the Gaza strip. It is located between Jabaliyah and Beit Hanoun, about 3 kilometres from the border with Israel both to the north and to the east. Although the Israeli armed forces had entered Gaza at the time of the incident, in this area they remained on the Israeli side of the "Green Line" border. Two tents were set up – one for male visitors and one for female visitors. They were positioned at about ten metres from each other. The male tent was outside the house of Mohammed Deeb Abd al-Dayem, the father of the ambulance driver.

869. The tents were struck three times in two hours, again with flechette missiles.

870. The Mission spoke to several of the witnesses who had attended and survived the attacks on the condolence tents. The Mission noted the great pride Arafa Abd al-Dayem's father had in his son and the deep sense of loss he clearly felt.

871. As regards the attacks on the condolence tents, witnesses stated that at around 7.30 a.m. on 5 January, the house of Mohammed Deeb Abd al-Dayem, was hit by a shell. The shell struck the fourth floor of the five-storey building causing the roof to collapse.[477] Three men at the gathering, including the father of the deceased, were slightly wounded and taken to the Kamal

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[475] General comment No. 6 (1982), para. 3.

[476] Human Rights Committee, general comment No. 31 (2004), para. 15. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 3 (b).

[477] Testimony of IK/12 and IK/13 to the Mission on 30 June 2009.

Idwan hospital in Beit Lahia for treatment. They returned to the house at around 8.15 a.m. where a decision was taken by the mourners to end the condolence ceremony for fear of further attacks.

872. The witness stated that at around 8.30 a.m. when the people were leaving the house of Mohammed Deeb Abd al-Dayem and moving towards the women's condolence tent, two flechette missiles struck within a few metres of the tent and less than half a minute apart. Around 20 to 30 persons assembled there were injured. The injured include a 13-year-old boy who received a flechette injury to the right side of his head and a 33-year-old man who sustained injuries to the chest and head, his body punctuated with little holes according to a witness who saw his corpse being prepared for burial. A 22-year-old man was wounded in the abdomen, the chest and the head. A 16-year-old boy sustained injuries to the head and the neck. A 26-year-old man sustained injuries to his chest, head and left leg. These five persons died of their injuries. Another 17 persons present at the scene, including 14 men, two children (aged 17 and 11) and one woman were injured.

873. IK/12, who survived the attack, still has several flechettes embedded in his body, including in his chest, and is unable to move freely without pain.

874. Witnesses described that their sense of loss was aggravated by the fact that they could not access the injured or dead in hospitals as movement was restricted owing to continued shelling in and around the neighbourhood. Only two families out of the five families of the dead were able to conduct the burial according to their traditional customs and practices.

2. The Israeli position

875. The Israeli Government does not appear to have made any public comment on the allegations surrounding the Abd al-Dayem case, despite information about it being in the public domain for some time.[478] It has, however, recalled that the Israeli High Court of Justice has rejected the argument that flechette munitions are by their nature indiscriminate and maintains that subject to the general requirements of the rules of armed conflict their use is legal.[479]

3. Factual findings

876. The Mission visited the area and the house of the Abd al-Dayem family. It spoke with the father of Arafa Abd al-Dayem, who had died as a result of the injuries received while working as a first-aid volunteer, and with several of the witnesses who had attended the condolence ceremonies.

877. The account of the incidents was consistent and plausible. The fact that it was mainly men who were killed near the women's tent is explained by the fact that the strikes occurred precisely when the men were making their way across the road.

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[478] The incident is mentioned in Amnesty International, *Fuelling Conflict: Foreign Arms Supplies to Usrael/Gaza* (February 2009).

[479] See "The operation in Gaza…", paras. 431-435.

878. The Mission can see nothing at all that points to the house of Mohammed Deeb Abd al-Dayem, or the condolence tents constituting a military objective. The repeated nature of the strikes indicates that there was a deliberate attempt to kill members of the group or the entire group, but no information about the purpose of the strikes has been forthcoming from the Israeli authorities.

879. The Mission inspected the sites of the attacks and was left in no doubt that they had been entirely deliberate. There was a tent at each side of the wide road. The particular area is relatively open.

4. Legal findings

880. While international humanitarian law does not explicitly prohibit the use of flechettes in all circumstances, the principles of proportionality and precautions necessary in attack render their use illegal. Flechettes are 4-cm-long metal darts used as anti-personnel weapons that penetrate straight through human bone and can cause serious, often fatal, injuries.[480] Discharged from tank shells and aircraft or UAV-launched missiles, they are fired in salvo and are therefore an area anti-personnel weapon. They are, therefore, by their nature lacking in discrimination.

881. The Mission notes that, during the condolence ceremony, flechette shells were fired in the vicinity of a large group of civilians, killing 5 and injuring more than 20. To consider the attacks indiscriminate would imply that there was a military objective underlying the attacks in the first place. The Mission has no information on which to base such a conclusion and notes the silence of the Israeli authorities on the incident.

882. The Mission therefore considers that the families participating in the condolence ceremony were civilians and taking no active part in hostilities. The attacks on the condolence tent on the morning of 4 January were entirely unjustified and unnecessary. The attacks seemed designed to kill and maim the victims directly and otherwise to terrify the people in the area rather than to pursue any genuine military objective.

883. The Mission finds that the attack on the Abd al-Dayem family condolence tents constitutes an intentional attack against the civilian population and civilian objects, wilful killing and the wilful infliction of suffering. In particular, the Mission believes that any party using a flechette missile in circumstances that are totally or predominantly civilian cannot fail to anticipate the severe and unnecessary suffering of the civilians affected.

884. Based on the facts ascertained, the Mission therefore finds there to have been violations of customary international law in respect of a deliberate attack on civilians. It considers the attack was not only an attack intended to kill but also to spread terror among the civilian population, given the nature of the weapon used. (See art. 51 (2) of Additional Protocol I.)

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[480] Amnesty International, Israel/Gaza: Operation "Cast Lead": 22 days of death and destruction (London, 2009) and B'Tselem, "Flechette shells: an illegal weapon", available at: http://www.btselem.org/english/firearms/flechette.asp.

885. The Mission also finds the attack to constitute a grave breach of the Fourth Geneva Convention with respect to article 147 regarding wilful killings and wilfully causing great suffering.

XII. THE USE OF CERTAIN WEAPONS

886. In the course of its inquiries, the Mission was made aware of the use of certain weapons by the Israeli armed forces. This chapter does not intend to present a comprehensive analysis of all the aspects raised on the kinds of weaponry used during the military operations. It is rather a summary of the Mission's views on a number of issues that arise from the foregoing chapters in relation to the obligation to take all feasible precautions in the choice of the means and methods of warfare. Many of the issues brought to the Mission's attention had already received scrutiny in the press or as a result of analysis carried out by a number of organizations.[481] Among these issues was the use of white phosphorous, the use of flechette missiles, the use of so-called dense inert metal explosive (DIME) munitions, and the use of depleted uranium.

A. White phosphorous

887. White phosphorous was used throughout the ground phase of the operations. The Israeli Government has set out its reasons for doing so, emphasizing that it is not only not a proscribed weapon under international law but that it was deployed with a high degree of success.[482]

888. It has explained that it used white phosphorous in two forms. One was as exploding munitions used as mortar shells by ground and naval forces. It says that in this form it was deployed only in unpopulated areas for marking and signalling purposes, and not in an anti-personnel capacity. It claims that, as a result of international concerns, it decided to stop using these munitions on 7 January 2009, although this was not required by international law. It also acknowledges the use of smoke projectiles containing felt wedges dipped in white phosphorous.

889. The Mission understands the means of deploying these smoke projectiles was that they were fired as a canister shell by 155-mm howitzers. The projectile was timed or programmed to air-burst over its designated target. The canister shell then discharged a quantity of felt wedges impregnated with white phosphorous, usually in the order of 160 wedges in a fan-like dispersion earthwards. These wedges with white phosphorous, which is a pyrophoric chemical (that is, self-igniting when in contact with the air), emit smoke and continue to do so until the chemical is exhausted or deprived of air. Wedges of white phosphorous therefore remain active and have done so in Gaza for up to 21 and 24 days after discharge. It is technically possible that there are

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[481] See, for example, Physicians for Human Rights-Israel, Report of the Independent Fact Finding Mission into violations in the Gaza Strip during the period 27.12.08-18.01.09, http://www.phr.org.il/phr/files/articlefile_1241949935203.pdf, Human Rights Watch, Rain of Fire: Israel's Unlawful Use of White Phosphorous in Gaza (March 2009), Amnesty International, Fuelling conflict: Foreign arms supplies to Israel/Gaza (February 2009). Report of the Independent Fact Finding Committee on Gaza, "No safe place…", paras. 206-207; Summary of the Report of the United Nations Headquarters Board of Inquiry, paras. 46-56, documentation provided by UNRWA.

[482] "The operation in Gaza…", paras. 406-430. The Mission addressed written questions to the Government of Israel regarding the use of white phosphorous during the military operations in Gaza. No reply was received.

still active white phosphorous wedges in Gaza – in water tanks or in sewage systems, for example. Children have subsequently been injured by coming in contact with such wedges.

890. The Mission has recounted a number of incidents where it has particular concern about the choice to use white phosphorous. These incidents have been addressed in detail elsewhere and include the incidents at the UNRWA compound in Gaza City, the attacks on al-Quds and al-Wafa hospitals, also in Gaza City, and the use of white phosphorous in the attack on the Abu Halima family to the north of al-Atatra and in Khuz'a.

891. The Mission notes that, at least in the case of Abu Halima,[483] it appears that the white phosphorous was deployed by means of an exploding shell and not as a smoke projectile. This occurred several days after the apparent decision to stop using the munitions on 7 January 2009.

892. The Mission has also spoken at some length to a number of local and international medical experts who treated patients in Gaza who suffered burns as a result of exposure to white phosphorous.

893. The Mission need not repeat much of what it has already concluded on the choice to use white phosphorous in specific circumstances. It has already made clear that the risks it posed to the civilian population and civilian objects in the area under attack were excessive in relation to the specific military advantages sought.

894. The Israeli Government has frequently pointed out the difficulties posed by fighting in built-up areas. One of the difficulties is the proximity of civilian premises to possible military targets. Commanders have no choice but to factor in the risk to such premises and the people inside them in deciding which weapons to use. The Mission finds that the Israeli armed forces were systematically reckless in determining to use white phosphorous in built-up areas and in particular in and around areas of particular importance to civilian health and safety.

895. In addition to the reckless use of white phosphorous, the Mission must emphasize that it is concerned not only with the inordinate risks the Israeli armed forces took in using it, but also the damage it caused in fact. In speaking with medical experts and practitioners, it was impressed by the severity and sometimes untreatable nature of the burns caused by the substance.

896. Several doctors told of how they believed they had dealt with a wound successfully only to find unexpected complications developing as a result of the phosphorous having caused deeper damage to tissue and organs than could be detected at the time. Several patients died, according to doctors, as a result of organ failure resulting from the burns.

897. A senior doctor at al-Shifa hospital in Gaza City confirmed that Sabah, Ghada and Farah Abu Halima were admitted with serious burns and transferred to Egypt for treatment. The doctor believed that the burns were caused by contact with white phosphorous.[484]

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[483] See chap. XI.

[484] Mission interview on 12 June 2009.

898. The doctor commented that, before the military operations, the hospital was not familiar with white phosphorous burns. Staff became concerned when patients who had been sent home after treatment of apparently minor burns would come back in the following days with more serious wounds. They found that when they removed the bandages that had been applied to a wound that still contained fragments of white phosphorous, smoke would come from the wound, even hours after the injury. White phosphorous continues to burn as long as it is in contact with oxygen.

899. International doctors working with al-Shifa staff, some of whom had worked in Lebanon during the 2006 war, identified white phosphorous as the cause of these injuries and the treatment was adapted accordingly. Any apparent white phosphorous burn was immediately covered with a wet sponge and the particles extracted. White phosphorous sticks to tissue, so all flesh and sometimes the muscle around the burn would have to be excised.

900. In addition, the highly toxic substance, used so widely in civilian settings posed a real health threat to doctors dealing with patients. Medical staff reported to the Mission how even working in the areas where the phosphorous had been used made them feel sick, their lips would swell and they would become extremely thirsty and nauseous.

901. While accepting that white phosphorous is not at this stage proscribed under international law, the Mission considers that the repeated misuse of the substance by the Israeli armed forces during this operation calls into question the wisdom of allowing its continued use without some further degree of control. The Mission understands the need to use obscurants and illuminants for various reasons during military operations and especially in screening troops from observation or enemy fire. There are, however, other screening and illuminating means which are free from the toxicities, volatilities and hazards that are inherent in the chemical white phosphorous. The use of white phosphorous in any from in and around areas dedicated to the health and safety of civilians has been shown to carry very substantial risks. The Mission therefore believes that serious consideration should be given to banning the use of white phosphorous as an obscurant.

B. Flechettes[485]

902. Flechettes are small, dart-like pieces of composite metal and are usually fired in salvo from canister projectiles or shells. Those fired and retrieved in Gaza were 4 cm long and approximately 2–4 mm wide, having a pointed end and a fletched end.

903. Flechettes are used in an anti-personnel role and are discharged in such quantities that they cover an area forward of the canister shell. As an area weapon, on impact the darts will hit whatever is within a certain zone. They are incapable of discriminating between objectives after detonation. They are, therefore, particularly unsuitable for use in urban settings where there is reason to believe civilians may be present.

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[485] See "The operation in Gaza…", paras. 431-434. The report simply states that the weapons are not proscribed and this was reiterated by the Israeli High Court of Justice in 2002. Although it does not address specific allegations, it does state in general terms that allegations are still being investigated (para. 435). The Mission addressed questions to the Government of Israel regarding the use of flechettes during the military operations in Gaza. No reply was received.

904. Flechettes were fired during the military operations on several occasions by tanks and on at least one occasion from an air-to-surface missile of the "Helfire" type.[486] In all cases those hit by these devices were civilians and in one case were attending a condolence tent following the loss of a family member who was also killed by flechettes.

905. Flechettes are known to bend, break or "tumble" on impact with human flesh. Such performances are often part of the flechettes design characteristic and are marketed as such. "Tumbling" in particular is adjudged to be a further determination of the projectiles "incapacitation" effect.[487] The Mission notes, however, that flechettes can be designed to be free of these post-impact characteristics if it is desired that they should do so.

C. Alleged use of munitions causing a specific type of injury

906. The Mission received reports from Palestinian and foreign doctors who operated in Gaza during the military operations of a strikingly high percentage of patients with severed legs as a result of the impact of projectiles launched by the Israeli armed forces. Dr. Mads Gilbert, a Norwegian anaesthetist, and Dr. Eric Fosse, a Norwegian surgeon, who carried out surgery in al-Shifa Hospital from 31 December 2008 to 10 January 2009,[488] described to the Mission the characteristics of the wounds. The amputations mostly occurred at waist height in children, generally lower in adults, and were combined with skin-deep, third-degree burns, four to six fingers upward from the amputation. Where the amputation took place, the flesh was cauterized as a result of the heat. The patients with these amputations had no shrapnel wounds, but red flashes on the abdomen and chest. The excision of large pieces of flesh was not infrequent in these patients. Dr. Gilbert added that the patients also suffered internal burns. This description was confirmed to the Mission by Palestinian surgeons.

907. The Mission understands such injuries to be compatible with the impact of DIME weapons. DIME weapons consist of a carbon-fibre casing filled with a homogeneous mixture of an explosive material and small particles, basically a powder, of a heavy metal, for instance, a tungsten alloy. Upon detonation of the explosive, the casing disintegrates into extremely small, non-lethal fibres. The tungsten powder tears apart anything it hits. The impact of such weapons in general causes very severe wounds within a relatively limited diameter (compared to other projectiles) from the point of detonation. As the small heavy metal particles can slice through soft tissue and bone, survivors close to the lethal zone may have their limbs amputated and tungsten alloy particles embedded in their bodies. The probabilities of injuries to persons at a greater distance from the detonation point are reduced compared to more conventional projectiles. It is therefore also referred to as a "focused lethality munition".[489]

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[486] See Abduldayem case in chapter XI.

[487] William Kokinakis and Joseph Sperrazza, "Criteria for incapacitating soldiers with fragments and flechettes (U)", Ballistic Research Laboratories Report Number 1269, Aberdeen Proving Ground, Maryland (January 1965).

[488] Mads Gilbert and Eric Fosse, "Inside Gaza's al-Shifa hospital", *The Lancet*, vol. 373, No. 9659 (17 January 2009), p. 200.

[489] The DIME munitions subject of discussion here are distinct from the missile described, for example, in the al Maqadmah mosque case. In that case the missile had been fitted with a micro-shrapnel fragmentation sleeve. The

908. The materials submitted to the Mission, including by the expert witness Lt. Col. Lane, point to specific medical concerns with regard to survivors of DIME weapon injuries.[490] The tungsten alloy particles are suspected to be highly carcinogenic and so small that they cannot be extracted from the patient's body. Dr. Gilbert noted that there had been no follow-up studies on the survivors of this type of amputation observed in Gaza and Lebanon since 2006 following Israeli military operations. There is some research suggesting that these patients might be at increased risk of cancer. These concerns apply equally to missile or projectile shrapnel of heavy metal such as tungsten or tungsten alloy which was used in at least two occasions in Gaza. The carcinogenic hazards are the same no matter the delivery means or the size or shape of the pieces of the metal that enter human flesh.

D. Factual findings on the use of munitions causing a specific type of injury

909. From the facts it gathered, the Mission finds that the allegations that DIME weapons were used by the Israeli armed forces in Gaza during the military operations require further clarification with regard to their use and, particularly, the health-care needs of survivors of the amputations attributed to DIME weapons.

910. The Mission notes that DIME or heavy metal shrapnel weapons and weapons armed with heavy metal are not prohibited under international law as it currently stands. The "focused lethality" reportedly pursued in the development of DIME weapons could be seen as advancing compliance with the principle of distinction. The Mission also observes, however, that there remains a very high risk of harming civilians when using these weapons in built-up areas and that concerns have been expressed that DIME weapons could have a particularly adverse impact on the enjoyment of the right to health of survivors, which would go beyond the impact generally associated with being affected by anti-personnel weapons in an armed conflict.

E. Allegations regarding the use of depleted and non-depleted uranium munitions by the Israeli armed forces

911. The Mission received submissions and reviewed reports alleging the use of depleted uranium weapons by the Israeli armed forces during the military operations in Gaza.[491] While it cannot be excluded that such weapons were used, on the basis of the information received the Mission decided not to investigate the matter further.

912. The Mission also received a submission which alleged that the analysis of the air filter taken from an ambulance which was in operation in the Beit Lahia area during the military

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micro-shrapnel consisted of tungsten or tungsten alloy cubes, which may have similar carcinogenic hazards as the powder or fibres in DIME.

[490] Written submissions to the Mission by expert witness Lt. Col. Lane.

[491] Arab Commission for Human Rights, Action des citoyens pour le désarmement nucléaire and International Coalition Against War Criminals, Preliminary report, Mission for Gaza, April 2009 by Jean-François Fechino, pp. 55-60; Action des citoyens pour le désarmement nucléaire, On the use of radioactive weapons in the Gaza Strip during « Operation Cast Lead » (27 December 2008 - 18 January 2009), http://www.acdn.net/.

operations showed unusually high levels of non-depleted uranium and niobium in the air.[492] In view of the limited time available, the Mission could not further investigate this matter.

XIII. ATTACKS ON THE FOUNDATIONS OF CIVILIAN LIFE IN GAZA: DESTRUCTION OF INDUSTRIAL INFRASTRUCTURE, FOOD PRODUCTION, WATER INSTALLATIONS, SEWAGE TREATMENT PLANTS AND HOUSING

A. The destruction of el-Bader flour mill

913. The Mission visited the site of the air strikes and surveyed the surrounding area in Sudaniyah, west of Jabaliyah. It met and interviewed the Hamada brothers, joint owners of the el-Bader flour mill, on four occasions. It spoke with representatives of the business community about the context and consequences of the strike on the flour mill. Mr. Hamada also testified at the public hearings in Gaza.[493] The Mission also addressed questions to the Government of Israel with regard to the military advantage pursued in attacking the el-Bader flour mill, but received no reply.

914. The Hamada brothers are well-established businessmen and hold *Businessman Cards*, issued by the Israeli authorities to facilitate business travel to and from Israel. The flour mill is one of several businesses owned by the brothers on this site, including a tomato-canning factory and a factory for the production of nappies. These last two businesses were closed down sometime before the beginning of the Israeli military operations in Gaza, as the blockade led to a lack of supplies. According to Mr. Rashad Hamada, the tomato-canning business failed primarily because of the Israeli authorities' refusal to allow tins for canning into Gaza. The owners had transferred many employees from the businesses that had closed down to the flour mill so that these employees would continue to draw a salary. At the time of its destruction, the flour mill employed more than 50 people.

915. The el-Bader flour mill began operations in 1999.[494] By 27 December 2008, it was the only one of Gaza's three flour mills still operating. The others had ceased operations owing to a lack of supplies. The el-Bader mill was able to continue in part because of its greater storage capacity.

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[492] Submission by Chris Busby & Dai Williams. Battlefield Fallout: Evidence of Uranium and Niobium in Weapons Employed by the Israeli Military in Gaza. Analysis of Ambulance Air Filter and Bomb Crater.

[493] The Mission met Rashad Hamada and other members of the Palestinian business community on 3 June 2009 and interviewed him at the site of the el-Bader flour mill on 4 June 2009. Mr. Hamada testified at the public hearings in Gaza on 29 June 2009.

[494] Rashad Hamada stated that the aim of the business, besides making a profit, was to help Gaza to be more self-sustaining economically and thus to reduce dependence on external supplies. He indicated that the increase in running costs caused by the blockade gave Israeli competitors a considerable advantage. The cost of electricity, for example, was approximately 50 per cent higher than it was for his competitors in Israel. In addition, since the Israeli Government had closed the Erez crossing and all imports and exports had to go through the Karni crossing, transport costs had increased 10-fold. The increased cost for the consumer had, as a result, also been significant. The retail price of milled flour had risen, in his estimation, by perhaps as much as 10 per cent.

916. On 30 December 2008, a recorded warning was left on the flour mill's answering machine to the effect that the message was from the Israeli armed forces and that the building should be evacuated immediately. The approximately 45 workers in the mill at the time were evacuated at around 9.30 a.m.

917. Following the evacuation, Mr. Hamada called a business associate in Israel, explained what had happened and asked him for advice. The business associate called him back, indicating that he had spoken with contacts in the Israeli armed forces on Mr. Hamada's behalf, and had been told that, although the mill had been on a list of proposed targets, they had decided not to proceed with the strike. Mr. Hamada did not receive any information as to why his mill might have been targeted.

918. As a result of these conversations and the fact that there had been no strike, the employees returned to work the next day. Work continued for a number of days until a second recorded warning was received on or around 4 January 2009. The flour mill was again evacuated and Mr. Hamada again contacted his business associate in Israel. The same scenario unfolded whereby Mr. Hamada received a call later on to the effect that the Israeli armed forces had informed his associate that the mill would not be hit. The employees returned to work in the light of the information and the fact that the warnings had not been put into effect.

919. On 9 January, at around 3 or 4 a.m., the flour mill was hit by an air strike, possibly by an F-16. The missile struck the floor that housed one of the machines indispensable to the mill's functioning, completely destroying it. The guard who was on duty at the time called Mr. Hamada to inform him that the building had been hit and was on fire. He was unhurt. In the next 60 to 90 minutes the mill was hit several times by missiles fired from an Apache helicopter. These missiles hit the upper floors of the factory, destroying key machinery. Adjoining buildings, including the grain store, were not hit. The strikes entirely disabled the factory and it has not been back in operation since. A large amount of grain remains at the site but cannot be processed.

920. The Israeli armed forces occupied the disabled building until around 13 January. Hundreds of shells were found on its roof after the soldiers left. They appeared to be 40-mm grenade machine-gun spent cartridges.

921. The Hamada brothers rejected any suggestion that the building was at any time used for any purpose by Palestinian armed groups. They pointed out that all of the buildings and factories were surrounded by a high wall and manned by at least one guard at night. In addition, the Israeli authorities knew them as businessmen and they would not have been given Businessman Cards had there been any reason for the Israeli Government to suspect that they were involved with or supported armed groups. They were both adamant that their interest was and always had been industrial and commercial, and that the last thing they were prepared to do was put their business at risk.

1. Factual findings

922. The Mission found the Hamada brothers to be credible and reliable witnesses. It has no reason to doubt the veracity of their testimony. The information they provided was corroborated

by other representatives of the Gaza business community with whom the Mission discussed the context and consequences of the strike on the flour mill.

923. The owners and employees of the flour mill were forced to evacuate the building twice because of the two recorded warnings left on the answerphone, which were not followed by air strikes. They were put into a state of fear as a result of the false alarms. When the mill was hit on 9 January, the strike happened without prior warning, raising questions about the efficacy or seriousness of the warnings system used by the Israeli armed forces.

924. The consequences of the strike on the flour mill were significant. Not only are all the employees out of work, the capacity of Gaza to produce milled flour, the most basic staple ingredient of the local diet, has been greatly diminished. As a result, the population of Gaza is now more dependent on the Israeli authorities' granting permission for flour and bread to enter the Gaza Strip.

925. Available information does not suggest that the Israeli authorities have investigated the destruction of the flour mill. The Mission finds the version of the Hamada brothers to be credible and in line with the Israeli practice of leaving telephone warnings of impending attacks.

2. Legal findings

926. In considering the degree to which there may have been violations of international humanitarian law, the Mission refers to article 52 of Additional Protocol I, which is set out in full above at chapter VII. The Mission also considers the following provisions to be relevant to its deliberations:

> **Article 54 (1) and (2) of Additional Protocol I**
>
> 1. Starvation of civilians as a method of warfare is prohibited.
>
> 2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.
>
> **Article 147 of the Fourth Geneva Convention provides:**
>
> Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

927. No other buildings in the industrial compound belonging to the Hamadas were damaged at the time of the strikes. It appears that the strikes on the flour mill were intentional and precise.

928. The Hamada brothers are well-known businessmen. The Israeli authorities did not appear to consider them either before or after the military operations to be a threat, given the unrestricted issuance of their Businessman Cards and their ability to travel to Israel afterwards. The issuance of a Businessman Card is no trifle, especially in the context of the ongoing restrictions on trade. It is not plausible that the Israeli authorities would issue such a document to any party it regarded with suspicion.

929. The only issue that remains to be examined is whether there was any reason for the flour mill to have been deemed a military objective on 9 January. The building was one of the tallest in the area and would have offered extensive views to the Israeli armed forces. The Mission notes that taking control of the building might be deemed a legitimate objective in the circumstances. However, by 9 January the Israeli armed forces were fully aware that the flour mill could be evacuated at short notice by using the warning message system. If the reason for attacking the mill was to gain control of it for observation and control purposes, it made no sense to bomb the principal machinery and to destroy the upper floors. There is also no suggestion that the Israeli armed forces considered the building to be a source of enemy fire.

930. The nature of the strikes on the mill and in particular the precise targeting of crucial machinery on one of the mid-level floors suggests that the intention was to disable its productive capacity. There appears to be no plausible justification for the extensive damage to the flour mill if the sole objective was to take control of the building. It thus appears that the only purpose was to put an end to the production of flour in the Gaza Strip.

931. From the facts it ascertained, the Mission finds that there has been a violation of the grave breaches provisions of the Fourth Geneva Convention. Unlawful and wanton destruction which is not justified by military necessity would amount to a war crime.

932. Having concluded that the strikes were without any military justification, and therefore wanton and unlawful, the Mission finds it useful to consider if there was any non-military purpose to the strikes.

933. The aim of the strike, if not military, could only have been to destroy the local capacity to produce flour. The question is whether such deliberate destruction of the sole remaining flour-producing capacity in the Gaza Strip can be described as having been done for the purpose of denying sustenance to the civilian population.

934. Article 54 (1) and (2) of Additional Protocol I reflect customary international law.[495] Article 54 (2) prohibits acts whose specific purpose is the denial of sustenance for whatever reason, including starvation, forced displacement or anything else. In short, the motive for denying sustenance need not be to starve the civilian population. Indeed, the motive is irrelevant.

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[495] In this respect the Mission agrees with the views expressed by ICRC in *Customary Rules of International Law*..., pp. 189-193.

935. The civilian population is increasingly dependent on external humanitarian assistance, whose arrival depends on permission from the Israeli authorities. While it is not suggested that starvation is imminent, the health and welfare of the population at large have been profoundly affected by the blockade and the military operations. The only reason why starvation is not imminent however is precisely the provision of humanitarian assistance. Without such assistance Gaza's civilian population would not be able to feed itself.[496]

936. States cannot escape their obligations not to deny the means of sustenance simply by presuming the international community will fill the gap they have created by deliberately destroying the existing capacity.

937. From the facts ascertained by it, the Mission finds that the destruction of the mill was carried out for the purpose of denying sustenance to the civilian population, which is a violation of customary international law as reflected in article 54 (2) of Additional Protocol I and may constitute a war crime.

3. The right to food[497]

938. The right to adequate food therefore requires the right to food security (through either self-production or adequate income) and the "fundamental" right to be free from hunger.[498] That Israel has not created a state of hunger is the result largely of the external aid provided to the population of Gaza. It has, however, severely affected the ability of Gazans both to produce food and to purchase it.

939. Article 1 of the International Covenant on Civil and Political Rights states that "in no case may a people be deprived of its own means of subsistence."

940. The right to adequate food is also reflected in the Convention on the Elimination of All Forms of Discrimination against Women, which requires State parties to guarantee to women "adequate nutrition during pregnancy and lactation."

941. The Mission finds that, as a result of its actions to destroy food and water supplies and infrastructure, Israel has violated article 1 of the International Covenant on Civil and Political Rights, article 11 of the International Covenant on Economic, Social and Cultural Rights and article 12 (2) of the Convention on the Elimination of All Forms of Discrimination against Women.

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[496] According to John Ging, 80 per cent of the Gazan population is dependent on UNRWA for food supplies. Interview with IRIN, 20 January 2009.

[497] See chap. XVII.

[498] See Randle C. DeFalco, "The right to food in Gaza: Israel's obligations under international law", *Rutgers Law Record*, vol. 35 (Spring 2009), available at: http://www.lawrecord.com/rutgers_law_record/2009/05/the-right-to-food-in-gaza-israels-obligations-under-international-law.html#sdfootnote24sym.

B. The destruction of the Sawafeary chicken farms

942. On or around the night of 3 January 2009 Israeli troops arrived at a number of houses on al-Sekka Road in Zeytoun. The Mission interviewed four people who were direct witnesses to and victims of the events that occurred in the aftermath of their arrival. One witness was interviewed three times for a total of five hours and testified at the public hearings in Gaza.[499] Another three were interviewed for an hour each. The Mission also visited the site of the Sawafeary chicken farms. Finally, the Mission addressed questions to the Government of Israel with regard to the military advantage pursued in attacking Mr. Sawafeary's chicken farms, but received no reply. The following narrative reflects the eyewitness accounts.

943. Sameh Sawafeary is a chicken farmer. His family has been in the egg production business for many years. He indicated that he, his brothers and his children owned 11 chicken farms in Zeytoun as of December 2008. The farms housed more than 100,000 chickens.

944. On 3 January, Mr. Sawafeary, who was in his home on al-Sekka Road in the al-Samouni neighbourhood of Zeytoun with his family, was alerted by an al-Jazeera television news broadcast at around 8 p.m. that an Israeli ground invasion was imminent.[500] As a result, he took a number of precautions, including hiding money and other valuables. He then gathered around 11 members of his family on the upper floor of the two-storey concrete house. At around 10 p.m. a missile struck the house, entering through the rear of the upper floor and exiting near the window of the living room opposite. The missile passed over several of Mr. Sawafeary's children and grandchildren, who were lying on the floor. No one was injured.

945. At around 11 p.m., Mr. Sawafeary heard the sound of helicopters flying over his house followed by soldiers landing on his roof. The soldiers remained there until 7 a.m. the next morning, firing what he described as "a rain of bullets". The family stayed, terrified, on the floor of an upstairs room.

946. At around 7.15 a.m. on 4 January, soldiers came into the upstairs room where the family was sheltering. They separated the men from the women and put the women in another room. The hands of the men and the boys were tied behind their backs, except for one of Mr. Sawafeary's sons who has only one arm. After some time the commander told Mr. Sawafeary that they should walk south and "go to Rafah". The soldiers then searched the house. The 11 members of the household there at the time left the house as instructed.

947. The Sawafeary family spent the following five days in terror. Together with neighbouring families they spent one night in the Abu Zur house and the following three in the nearby house of Mr. Rajab Mughrabi. During that time they suffered a number of violations at the hands of the Israeli armed forces, including the killing of the child Ibrahim Juha (see chap. XI).

948. For the purposes of this section the Mission refers to the information it received about the systematic destruction that occurred for several days and which the witnesses were able to see during the time they were forced by the circumstances to remain in the house of Mr. Mughrabi.

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[499] Interviewed by the Mission in Gaza on 3 June and 14 June and at the Gaza public hearing on 29 June.

[500] The previous night, a garage next door had been destroyed by an air strike.

949. Mr. Sawafeary and Mr. Mughrabi informed the Mission that they had watched Israeli armoured bulldozers systematically destroy land, crops, chickens and farm infrastructure. Mr. Mughrabi stated that he watched the bulldozers plough through fields with crops and trees, destroying everything in their path. Mr. Sawafeary stated that he saw less, as he was watching through a small opening because he was afraid of being seen and shot. He stated that he saw only two or three "tanks", but was not in a position to say whether there were more. He watched as the armoured bulldozers destroyed the chicken farms, crushing the wire mesh coops with the chickens inside. He could not see his own farms and the chickens he could see being destroyed were not his. He noted that the drivers of the tanks would spend hours flattening the chicken coops, sometimes stopping for coffee breaks, before resuming their work.

950. When he left Mr. Mughrabi's house on 8 January, Mr. Sawafeary was able to see that his own farms did not appear to have been subjected to the destruction he had witnessed from inside the house. However, when he was able to return to his home after the Israeli withdrawal all 31,000 of his chickens had been killed and the coops systematically flattened.

951. The Mission visited the site and saw the still flattened mesh coops, which had been covered with corrugated iron, as well as the remains of water tanks and machinery. The Mission was also shown the remnants of a small mosque near the end of one of the lines of the coops that had been destroyed. The remains of some dead chickens were still visible and Mr. Sawafeary stated that it had been a mammoth task to clean up the area when he returned. He pointed out that, in addition to the loss of livestock, the farm had been completely automated with significant investment in machinery, all of which had been destroyed, as had the plant for packaging the eggs. In short, the business had been razed to the ground. A protective grille, believed to be part of a D-9 armoured bulldozer, was found at the site.

952. The Mission notes comments from one soldier to Breaking the Silence that appears to broadly corroborate the destruction in Zeytoun, probably at the hands of the Givati Brigade.[501]

953. The Mission inspected the inside of Mr. Sawafeary's house and noted damage to the upper floor, where a missile had penetrated. It also observed a number of graffiti that appeared to have been written by Israeli troops. One said "424 Givati". There were others apparently written in Russian.

954. Mr. Sawafeary told the Mission that he and his family together supplied approximately 35 per cent of the egg market in Gaza. His own farms supplied over 10 per cent. He noted that it was not only his farms that had been destroyed but also most of his family's farms had been destroyed in the same way as his. He estimated that close to 100,000 chickens were killed in the process.

955. The Mission has reviewed the relevant UNOSAT report and satellite imagery. One satellite image shows the Sawafeary chicken farms in June 2007 and another shows the area in

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[501] *Soldiers' Testimonies...*, testimony 37, p. 82.

January 2009. The images depict clearly the size of the farms and the surrounding area. The destruction is plainly visible in the second image.[502]

1. Factual findings

956. The systematic destruction along with the large numbers of killings of civilians suggest premeditation and a high level of planning. Even in the context of a campaign that had many serious violations of international humanitarian law, the events in Zeytoun at this time stand out.

957. The Mission finds that the destruction of the land and farms in the area was not justified by the pursuit of any military objective. The Israeli armed forces that arrived took control of the area within a matter of hours. They remained there until 18 January. The destruction of the land was not necessary to move the tanks or equipment or gain any particular visual advantage.

958. An inspection of the scene indicates that the area is relatively sparsely populated. The Mission rejects the idea that the Sawafeary farm was destroyed in the pursuit of any military objective.

959. The destruction of the farms appears to have been wanton and not militarily necessary. Not only were the coops with the chickens destroyed, but all of the plant and machinery of the farms as well.

960. From the facts ascertained by it, the Mission finds that the Sawafeary chicken farms, the 31,000 chickens and the plant and material necessary for the business were systematically and deliberately destroyed, and that this constituted a deliberate act of wanton destruction not justified by any military necessity.

2. Legal findings

961. The Mission makes the same findings regarding article 147 of the Fourth Geneva Convention and article 54 (2) of Additional Protocol I, article 1 of the International Covenant on Civil and Political Rights, article 11 of the International Covenant on Economic, Social and Cultural Rights and article 12 (2) of the Convention on the Elimination of All Forms of Discrimination against Women as it made above in relation to the el-Bader flour mill.

C. The destruction of water and sewage installation

1. The Gaza wastewater treatment plant, Road No. 10, al-Sheikh Ejlin, Gaza City

962. The Mission visited the site of al-Sheikh Ejlin treatment plant on 3 and 17 June 2009. While there it interviewed the Director of the Coastal Municipalities Water Utility (CMWU), Mr. Munther Shublaq, inspected the plant, the site of lagoon No. 3 and the location where a large pipe carrying raw sewage had been ruptured. On 3 June, the Mission also visited a nearby farm that had been inundated with raw sewage and spoke to the farmer. The Mission interviewed Mr.

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[502] UNOSAT satellite image analysis, 27 April 2009, p. 29.

Munther Shublaq a second time at length on 14 June 2009. The Mission took photographs of the area, and obtained plans and diagrams of the plant. Finally, the Mission addressed questions to the Government of Israel with regard to the military advantage pursued in attacking al-Sheikh Ejlin treatment plant, but received no reply.

963. The Gaza wastewater treatment plant is located in the coastal area south-west of Gaza City in the al-Sheikh Ejlin neighbourhood. It was built in 1977 and expanded with support from development cooperation. It consists of a number of installations, including offices, tanks and lagoons to store raw sewage.

964. At some point between 3 and 10 January, a large missile hit the northernmost wall of lagoon No. 3, causing a massive outflow of raw sewage, which travelled a distance of 1.2 kilometres and damaged 5.5 hectares of land, including agricultural land, according to UNOSAT satellite imagery.

965. The chief of the plant, Mr. Jaoudat al-Dalou, explained to the Mission that when the Israeli ground offensive started around 3 January, all staff left for security reasons, as did the local residents of the sparsely populated area. Around 14 January, he received a phone call from someone in the vicinity of the plant reporting the strike on lagoon No. 3 and the flooding of neighbouring farmland by sewage. He contacted ICRC and PRCS to seek permission from the Israeli armed forces to go to the plant and carry out urgent repairs. Permission was denied on the grounds that the area was a "military zone".

966. After the withdrawal of the Israeli armed forces, Mr. al-Dalou and his colleagues returned to al-Sheikh Ejlin to inspect the damage. They also saw what they believed to be unexploded bombs nearby and called the police to contact UNRWA to clear the area. Mr. al-Dalou found a crater five metres deep on the north-east side of lagoon No. 3. The damaged wall took over four days to repair at a cost of some US$ 158,000. More than 200,000 cubic metres of raw sewage had flowed into neighbouring farmland.

967. In addition, a number of items, including an incubator, had been taken out of the plant and used by Israeli soldiers to make a barricade or protection wall. The damage done by the impact of bullets could still be seen on interior walls. Shattered windows had still not been replaced as glass was not available. Other damaged equipment included distillation equipment (damaged beyond repair) and a nitrogen ammonium machine.

968. In interviews with the Mission, Mr. Munther Shublaq, who issued a CMWU report of the damage in January 2009,[503] confirmed that staff had left upon the arrival of Israeli ground forces and did not return until their withdrawal. He also indicated that on hearing news of the rupture of lagoon No. 3 he made several unsuccessful efforts to obtain permission to access the area to stop the damage caused by the outflow.

969. The Mission noted breaks in a large raw-sewage pipe which ran to the north of lagoon No. 3. Plant officials suggested that clearly visible markings on the pipe had been made by tanks.

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[503] CMWU, "Damage assessment report: water and waste water infrastructure and facilities", January 2009, available at: http://www.cmwu.ps/upload/Damages_Assessment_for_W_WW_after_War2009.pdf.

The routes of such pipes are marked by 1.5-metre-high, red and white poles to ensure that care is taken not to damage the pipes. The damage is very close to one such pole.

970. The precise date of the strike on Lagoon No. 3 is uncertain because there were no witnesses in the area at the time. With satellite images it is, however, possible to establish that the strike must have occurred before 10 January 2009, as the images clearly show the massive outflow of sewage from the lagoon on that date.

971. It is also possible to ascertain from the satellite images that the strike on the lagoon wall's eastern side created a breach of about 22 metres, through which the sewage flowed. The same images show the route of the outflow and where it stopped. The United Nations Environment Programme carried out a ground survey of the site on 30 January 2009 and data from that survey were added to the UNOSAT image interpretation.

972. The plant occupies a position at the top of a hill and provides a view over a considerable area of open land, which is mainly farmland. As such, it might reasonably be considered to be of strategic interest.

Factual findings

973. The plant was effectively abandoned by staff when the ground invasion began. The strike on lagoon No. 3 must have occurred after the Israeli armed forces had taken control of the plant and the surrounding area as the employees interviewed confirmed that it was intact when they left the area. Although the damage to the raw-sewage pipe may have been caused by a tank stopping or passing over it, the Mission is not in a position to conclude that this was in fact what occurred.

974. Notwithstanding the possible military advantage offered to the Israeli armed forces by the plant's location, the Mission cannot find any justification for striking the lagoon with what must have been a very powerful missile, sufficient to cause a breach 5 metres deep and 22 metres wide. It is highly unlikely that Palestinian armed groups could have taken up positions in or around the lagoon after the initial occupation of the area by Israeli armed forces: any such groups would have been exposed in the open area. The fact that the lagoon wall was struck precisely there where it would cause outflow of the raw sewage suggests that the strike was deliberate and premeditated.

2. Namar wells group, Salah ad-Din Street, Jabaliyah refugee camp

975. The Mission visited the site of the Namar wells group on 17 June 2009.[504] It interviewed engineer Ramadan Nai'm, CMWU water production and storage manager, and Ibrahim al-Ejjla, CMWU media coordinator. The Mission took photographs of the site. The Mission also addressed questions to the Government of Israel with regard to the military advantage pursued in attacking the Namar wells group, but received no reply.

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[504] The Namar wells group consists of two of installations situated in Jabaliyah. See "Damage assessment report…".

976. The wells group stood approximately 50 metres from the Jabaliyah refugee camp's administration building, which was also destroyed. A crater (approximately five metres wide) was still visible in the grounds belonging to the civil administration, with at its bottom the case of a rocket.[505]

977. This was a complex of two water well pumps, one in operation and another next to it as standby. Mr. Ramadan Nai'm told the Mission how proud CMWU had been of this water well, which produced more than 200 cubic metres per hour of the best-quality water in the area. The well supplied water to some 25,000 people in eastern and central Jabaliyah. The standby well pump was capable of pumping some 100 cubic metres of water. Both were completely destroyed on 27 December by an airstrike.

978. In the Namar water wells complex there were not only pumping machines but also a 180 kg generator, a fuel store, a reservoir chlorination unit, buildings and related equipment. These were also destroyed.

979. The operator, Mr. Abdullah Ismail al-Zein, was killed in the air strike while he was working at the station. He was employed by the Municipality rather than by CMWU and had been working in the station for four years. He was blown to pieces and his identity was established when his shoes were found three days later.

980. The strike also blew up the pipes connecting the wells to other water wells; incoming water spilled into the area for some 10 days before the pipes could be shut off.

981. Mr. Nai'm informed the Mission that he tried through the mediation of ICRC to get permission from the Israeli armed forces to repair the supply pipes, but permission was not granted and he was obliged to wait until the withdrawal of the Israeli armed forces.

982. It was calculated that repairs to this group of water wells would cost around US$ 200,000, excluding the ancillary but necessary civil engineering works.

983. Mr. Nai'm stated that at least 10 bombs were used to destroy the complex. Not a single wall was left intact.

Factual findings

984. From the facts ascertained by it, the Mission finds that the Namar wells were destroyed by multiple air strikes on the first day of the Israeli aerial attack and that civil administration buildings located at approximately 50 metres were also destroyed.

985. The question remains as to whether the Israeli air strikes on the Namar wells group were deliberate or made in error. The Mission notes that the deployment systems and aircraft used in the strikes of 27 December (principally F-16 fighter jets and UAVs) are capable of a high degree of precision. It notes also that, by all accounts, a great deal of preparation had been put into determining and designating the targets of air strikes. The Mission considers it unlikely that a target the size of the Namar wells could have been hit by multiple strikes in error, given the

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[505] Photographs of the damage can be found in "Damage assessment report…".

nature of the deployment systems and the distance between the wells and any neighbouring buildings. The facts thus indicate that the strikes on the Namar wells group were intentional.

986. The Mission found no grounds to suggest that there was any military advantage to be gained from hitting the wells. There was no suggestion that Palestinian armed groups had used the wells for any purpose.

3. Legal findings

987. From the facts ascertained by it, the Mission makes similar findings to those set out regarding the violation of article 147 of the Fourth Geneva Conventions and article 54 (2) of Additional Protocol I in relation to the destruction of the el-Bader flour mill.

988. The right to food clearly includes the right to have adequate access to water. The Mission finds that this was denied to the people served by the Namar wells. It took some 75 days to repair them

989. The Mission also finds that the killing of Mr. Abdullah Ismail al-Zein was unlawful and constitutes a violation of the right to life. Since targeting the wells constituted an act of wanton destruction, the incidental loss of life cannot be justified with regard to any military advantage.

D. The destruction of housing

990. The Mission received information about the extensive destruction of houses and private property during the military operations.[506] During its own visits to the Gaza Strip, the Mission witnessed the extent of the destruction caused by air strikes, mortar and artillery shelling, missile strikes, the operation of bulldozers and demolition charges. Some areas of the Gaza Strip were more heavily affected than others, but the Mission saw many piles of rubble where, prior to the military operations, there had been multi-storey houses.

991. In many, if not most, of the incidents investigated by the Mission, described in chapters X, XI, XIV and XV, the victims it interviewed not only suffered the loss of loved ones (or were used as human shields or detained), but also saw their homes severely damaged or completely destroyed. For present purposes, the Mission will recall a few of the incidents relating to the destruction of housing.

992. In some cases, the damage to or destruction of housing was arguably related to the conduct of military operations against Palestinian combatants. The houses of Majdi Abd Rabbo

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[506] Information received includes the following reports: Al Mezan, Statistical Report on Persons Killed and Property Destroyed by Israeli Occupation Forces during Operation Cast Lead, June 2009, Al-Dameer Gaza, IOF Targets Civilian Premises and Cultural Properties during its Offensive on the Gaza Strip, May 2009, Submission to the Mission by Habitat International Coalition's Housing and Land Rights Network entitled "Targeting Shelters and Shelter Seekers during Operation Cast Lead in the Context of Israeli Military Practice.", and Submission to the Mission by the Centre on Housing Rights and Evictions (COHRE), June 2009, pp. 3-4.

and of his neighbour, HS/08, for instance, were destroyed in combat against the three Palestinian fighters hiding in HS/08's house (see chap. XIV).[507]

993. In many others, such as the shelling of the houses of Mahmoud Abd Rabbo al-Ajrami (chap. XIV), of the Sawafeary family (see above and chap. XI) and of the Abu Halima family (chap. XI), the houses were in the general path of the advancing Israeli ground troops.

994. In a third group of cases, however, the facts ascertained by the Mission strongly suggest that housing was destroyed without their having any direct link to combat operations. On 6 January 2009 at 1.45 a.m., Mr. Abu Askar received a phone call from the Israeli armed forces informing him that his family should evacuate their house as it was going to be targeted by an air strike. This warning was put into practice a few minutes later, when the home of about 40 members of the extended Abu Askar family was destroyed by a missile (see chap. X).

995. In Juhr ad-Dik, after the killing of Majda and Rayya Hajaj (chap. XI), the Israeli armed forces directed machine-gun fire at the house of the al-Safadi family for the entire afternoon of 4 January 2009. The soldiers firing at the house had seen the Hajaj and al-Safadi families taking refuge there after their failed attempt to flee to Gaza City. When the Hajaj family managed to leave Juhr ad-Dik the following day, Israeli troops apparently took up position in Mr. Youssef Hajaj's house, which they rendered completely uninhabitable, as the Mission saw for itself during a visit. His brother Saleh Hajaj was even less fortunate. His house was reduced to a pile of rubble.

996. Other neighbourhoods were destroyed during the last few days of the military operations as the Israeli armed forces were preparing to withdraw. For example, in an incident described below, after an attempt to demolish a cement-packaging plant in east Gaza, soldiers also destroyed the surrounding houses of the owner and the employees. The factory owner, Mr. Abu Jubbah, had hidden in the house for two days with seven members of his family. Suddenly, a direct strike on the side of the house warned them that the house was to be destroyed and they should leave. Waving a white flag, Mr. Abu Jubbah left the house in a rush, put his family in a car and drove off. On their way they saw tanks and soldiers in the area. Their house was destroyed by shelling. It took several strikes to destroy it, while the factory facilities and the fence were demolished by bulldozers. Housing for 55 factory workers was also demolished with bulldozers.[508]

997. Two further cases investigated by the Mission also exemplify the deliberate demolition of residential housing. The house of Wa'el al-Samouni, in which 21 family members died, was damaged but still standing when PRCS and ICRC extracted the wounded survivors in the afternoon of 7 January 2009 (chap. XI). When the family and rescuers returned to the area on 18 January, the house was completely demolished. As the Mission could see for itself during its visit to the area as well as on photographs taken on that day, the manner in which the house had collapsed strongly indicated that this was the result of deliberate demolition and not of combat.

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[507] The Mission is only noting that there was a factual link between combat and the destruction of the houses, it is not making a finding as to whether the destruction of the two civilian houses was proportionate to the military objective to be achieved.

[508] Mission interview with Mr. Atta Abu Jubbah, owner of the cement packaging factory.

Similarly, when Khalid Abd Rabbo returned to the home of his extended family in Izbat Abd Rabbo (which he had abandoned intact after the shooting of his daughters, see chap. XI) after the withdrawal of the Israeli armed forces, he found it completely demolished, as were the other houses in the vicinity. Khalid Abd Rabbo drew the Mission's attention to what appeared to be an anti-tank mine visible under the rubble of his neighbour's house, which had reportedly been used by the Israeli armed forces to cause the controlled explosion which brought down the building. As in the case of Wa'el al-Samouni's house, the way the buildings had collapsed strongly suggests that both Khaled Abd Rabbo's house and that of his neighbour were deliberately demolished by explosives experts, rather than damaged during combat. Khaled Abd Rabbo added that, to his knowledge, his house had been demolished by the Israeli armed forces shortly before they withdrew from Gaza.

1. Factual findings

998. From the facts gathered, the Mission concludes that, in a number of cases it investigated, the Israeli armed forces launched direct attacks against residential houses, destroying them. Although the Mission does not have complete information on the circumstances prevailing in Juhr ad-Dik, al-Samouni neighbourhood and Izbat Abd Rabbo when the houses of the Hajaj, al-Samouni and Khalid Abd Rabbo families were destroyed, the information in its possession strongly suggests that they were destroyed outside of any combat engagements with Palestinian armed groups. Nor were these houses otherwise making any effective contribution to military action. These attacks deprived the extended families living there of shelter and of a significant part of their property.

999. In other cases, residential neighbourhoods were subjected to air-launched bombing and to intensive shelling apparently in the context of the advance of Israeli ground forces. In these cases, although the facts gathered by the Mission do not suggest that the residential houses were directly targeted, it doubts whether there were military objectives pursued by the shelling.

2. Corroboration of Mission's factual findings and widespread nature of housing destruction

1000. Testimonies of Israeli soldiers deployed in Gaza during the military operations corroborate what the Mission saw for itself and heard from the witnesses it interviewed. Several of the soldiers interviewed by Breaking the Silence spoke of the unprecedented scale of destruction of houses and of "intentional, systematic destruction."[509] The testimonies of the soldiers appear to distinguish between three phases in or types of destruction of residential housing. First, there is the destruction which is incidental to the actual combat between the advancing Israeli forces and the Palestinian combatants or to Israeli forces directing fire at locations from which rockets were launched.[510] Second, there is destruction of houses for what is termed "operational reasons". This is the deliberate destruction of houses from which fire had been opened on Israeli soldiers or which were suspected of being booby-trapped, containing tunnels or being used for weapons storage.[511] "Operational necessity" also embraced the destruction of houses which obstructed visibility for the Israeli armed forces or had a "strategic advantage" for them.[512] "In case of any doubt, takedown houses. You don't need confirmation for anything, if you want", were the instructions of one commander to his troops.[513]

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[509] *Soldiers' Testimonies*..., pp. 59, 66, 69 and 101. One soldier recalls: "There was a point where D-9s were razing areas. It was amazing. At first you go in and see lots of houses. A week later, after the razing, you see the horizon further away, almost to the sea. They simply took down all the houses around so the terrorists would have nowhere else to hide."

[510] In "The hidden dimension of Palestinian war casualties…", the Jerusalem Centre for Public Affairs argues that Palestinian houses were also demolished when Palestinian armed groups attacked houses in Gaza in which the Israeli armed forces had taken up positions. This argument is supported with reports of incidents gathered from websites of Palestinian armed groups, such as the following referring to the evening of 9 January 2009: "Three RPG

1001. The third phase of destruction of housing was no longer tied to the "operational necessities" of the ongoing military operations. It was in view of "the day after" the Israeli armed forces withdrew from Gaza. In the words of one Israeli soldier:

> … then we were told there are houses to be demolished for the sake of "the day after". The day after is actually a thought that obviously we're going in for a limited period of time which could be a week and it might also be a few months. But it's not a longer span of time without defining what it is. And the rationale was that we want to come out with the area remaining sterile as far as we're concerned. And the best way to do this is by razing. That way we have good firing capacity, good visibility for observation, we can see anything, we control a very large part of the area and very effectively. This was the meaning of demolition for the sake of the day after. In practical terms this meant taking a house that is not implicated in any way, that its single sin is the fact that it is situated on top of a hill in the Gaza Strip.[514]

1002. Satellite imagery provided by UNOSAT at the Mission's request is consistent with the soldiers' testimonies. It shows, for instance, that 65 per cent of the destruction/damage of buildings in Rafah was caused by airstrikes between 11 and 18 January. By contrast, 54 per cent of the destruction/damage in Izbat Abd Rabbo (east Gaza) occurred between 6 and 10 January as the Israeli troops advanced into the city.[515]

1003. The UNOSAT reports on the destruction of buildings in al-Samouni neighbourhood and al-Atatra, two areas that suffered particularly heavy destruction of civilian housing and other buildings, show that most were destroyed during the last three days of the Israeli armed forces' presence on the ground in Gaza. In al-Samouni, out of 114 severely damaged or completely destroyed buildings, 60 were destroyed between 27 December 2008 and 10 January 2009 (i.e. the

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rockets and machine guns are fired against a house where IDF soldiers took up positions in the Ezvet Abd Rabbo region in the eastern sector of Jabalya" (p. 12).

[511] *Soldiers' Testimonies…*, pp. 26, 35, 44, 56, 59, 61 ("Sometimes you know the house is empty. You know as far as you can know. Now if the house disrupts your defence line, you take it down with a tank or a bulldozer. We took an eight-storey house and the instruction was not to enter any doorway because it would be booby-trapped."), and 66 ("we were to raze as much as possible of the area. Such razing is a euphemism for intentional, systematic destruction, enabling total visibility. Razing was meant to give us the advantage of full control over fire and field of view, to see exactly what was happening throughout the zone. So that no one could hide anything from us.").

[512] Ibid., pp. 12, 61, 100 and 101.

[513] Ibid., p. 56.

[514] Ibid., p. 66. See also p. 69.

[515] UNOSAT satellite imagery, pp. 14 ff.

air phase and the advance of the ground invasion), only 4 between 10 and 16 January and 50 between 16 and 19 January 2009.[516] Similarly, in al-Atatra, out of 94 severely damaged or completely destroyed buildings, 36 were destroyed between 27 December 2008 and 10 January 2009, only 6 between 10 and 16 January, and 52 between 16 and 19 January 2009.[517]

1004. These figures confirm that a first phase of extensive destruction of housing for the "operational necessity" of the advancing Israeli forces in these areas was followed by a period of relative idleness on the part of the Israeli bulldozers and explosives engineers. But during the last three days, aware of their imminent withdrawal, the Israeli armed forces engaged in another wave of systematic destruction of civilian buildings.[518]

3. Legal findings

1005. From the facts ascertained by it, the Mission finds that the houses of the families of Saleh Hajaj, of Wa'el al-Samouni, of Khalid Abd Rabbo and of Muhammad Fouad Abu Askar were subjected to direct attacks in spite of their unmistakably civilian nature. They did not present any apparent threat to the Israeli armed forces. These attacks violated the principle of distinction in customary international humanitarian law as codified in article 52 of Additional Protocol I.

1006. Considering the facts it has gathered on the destruction of these houses from the soldiers' testimonies and the UNOSAT report, the Mission finds that the conduct of the Israeli armed forces in these cases amounted to the grave breach of "extensive destruction… of property, not justified by military necessity and carried out unlawfully and wantonly" under article 147 of the Fourth Geneva Convention.

1007. Article 11 of the International Covenant on Economic, Social and Cultural Rights requires State parties to "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate… housing". From the facts ascertained by it, the Mission finds that the Israeli armed forces violated the right to adequate housing of the families concerned.

E. Analysis of the pattern of widespread destruction of economic and infrastructural targets

1008. The Mission interviewed Mr. Amr Hamad, the Deputy General-Secretary of the Palestinian Federation of Industries, on three separate occasions, including at the public hearings in Gaza. The Mission also met a number of businessmen involved in fishing, strawberry farming, construction, including concrete and cement production and packaging, food and drinks production, car mechanics and repairs, livestock farming and refrigeration. While much of the information provided to the Mission focused on the effect of the restrictions Israel had imposed on the Gaza Strip for a considerable time before 27 December 2008, significant information was also provided on the effect of the attacks during the Israeli military operations in Gaza.

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[516] UNOSAT report, p. 17.

[517] Ibid., pp. 20–21.

[518] The Mission finally notes that, in its formal submission, Housing and Land Rights Network – Habitat International Coalition provides a detailed historical account of the Israeli army practices of targeting civilian homes and generating displaced populations that suggests a pattern that is not unique to the military operation in Gaza of December 2008 – January 2009 , but "consistent over time and across borders".

1009. Mr. Amr Hamad indicated that 324 factories had been destroyed during the Israeli military operations at a cost of 40,000 jobs. In its detailed written report on the impact of the Israeli military activities, the Palestinian Federation of Industries points out that 200 businesses and factories were destroyed in Gaza City, 101 in northern Gaza and 20 in southern Gaza. Of the total 324 premises damaged, almost 30 per cent were linked to the metals and engineering sector, over 20 per cent to construction and 16 per cent to furniture businesses. Other sectors with significant losses were aluminium, food, sewing textiles, chemicals and cosmetics, plastics and rubber, paper and carton, and handicrafts. The Federation states that more than half were totally destroyed.

1010. The Federation emphasized that "the Gaza Strip's most crucial industries, and ones which require the greatest investment, were most severely hit".[519] Eleven of the 324 premises struck by the Israeli armed forces were linked to the food industry and the losses incurred amount to some US$ 37 million, i.e. over one third of all the losses to the industrial sector. Similarly, while the construction sector suffered 69 of the 324 strikes, this represented just under 30 per cent of the total damage. The report notes that the majority of the losses resulting from the strikes on the 324 premises related to machinery costs (50 per cent), while just over a quarter relate to the buildings themselves.

1011. The Mission found the information provided by Mr. Hamad, as well as the report produced by the Palestinian Federation of Industries, to be credible and reliable. The Mission discussed and was satisfied by the methodology used in compiling the report, which was produced with the support of the Konrad Adenauer Foundation. The Mission also found that the testimony of businessmen whose premises had been struck or destroyed by the Israeli armed forces corroborate information provided by Mr. Hamad and the Palestinian Federation of Industries.

1. Construction industry

1012. One of the incidents Mr. Hamad referred to at the public hearing relates to the destruction of the only cement-packaging plant in Gaza. The Mission also interviewed its owner, Mr. Atta Abu Jubbah.[520] According to the reconstruction of the events, the Israeli armed forces began striking the plant from the air, damaging it significantly. Later ground forces -- equipped with bulldozers and tanks -- moved in and used mines and explosives to destroy the silo that used to contain 4,000 tons of cement. Helicopters launched rockets to destroy the main manufacturing line and fired holes into the cement containers. Bulldozers were used to destroy the factory walls. Over four days the factory was systematically destroyed. The Mission spoke with a number of other witnesses able to verify this account and considers it to be reliable. Among those witnesses was a civil engineer who inspected the site and confirmed that certain aspects of the destruction could have been achieved only by placing explosives inside the building. The silo had not been entirely destroyed in the aerial attacks, so explosives were attached to its supporting columns.

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[519] Page 14 of the Report of the Palestinian Federation of Industries.

[520] Mission interview with Mr. Atta Abu Jubbah, Gaza, 17 June 2009.

1013. The plant was an important part of Gaza's construction industry. It produced cement in bags, selling 200 tons per day with a profit of US$ 15 per ton. The company is valued at some US$ 12 million. As mentioned above, the owner's house was also destroyed by rocket fire.

1014. The owner is one of fewer than 100 businessmen who are in possession of the Businessman Card issued by Israel. The Mission notes that the plant was not destroyed during the aerial phase but was systematically reduced to rubble in a concerted effort over several days at the end of the military operations.

1015. The destruction of Mr. Atta Abu Jubbah's plant forms part of what appears to have been a very deliberate strategy of attacking the construction industry. The Palestinian Federation of Industries also provides detail on the systematic and total destruction of the Abu Eida factories for ready-mix concrete. They were established in 1993. Nineteen of the 27 concrete factories were reported to have been destroyed, representing 85 per cent of the productive capacity.

1016. The ability to produce and supply concrete in a context where external supplies are entirely controlled by Israel is a matter not only of economic importance but arguably one of human necessity to satisfy the basic need for shelter. Even if the population can get by in makeshift accommodation or by living in cramped conditions with their extended families, the capacity to repair the massive damage done to buildings without internally produced concrete is severely reduced. To the extent that concrete is allowed to enter at all, it is significantly more expensive than domestically produced concrete.

1017. There appears to have been no military reason or justification for destroying the factory. This conclusion is borne out by the long established trading history of the owners and their recognition through the Businessman Cards.

2. Destruction of the remaining food industry

1018. As already reported, more than a third of all egg factories were destroyed by the Israeli armed forces. Other testimonies, for example that of the Mayor of al-Atatra,[521] who referred to the destruction of his sister's chicken farms, indicated that a substantial part of the chicken farming industry appears to have been deliberately and systematically destroyed.

1019. The Mission also notes the destruction of the al-Wadiyah Group's factories. The al-Wadiyah Group employed some 170 people, had been in business since 1954 and produced a variety of food and drinks. Dr. al-Wadiyah presented a detailed account of its activities and losses to the Mission.[522]

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[521] Mission interview with Muhammad Husein al-Atar, Mayor of al-Atatra, 3 June 2009.

[522] Mission interview with Dr. Yasser al-Wadia, 3 June 2009.

1020. The Mission found no reason to believe that the premises of the flour mill, chicken farms and food-processing plants that were destroyed had been used for purposes that would render them in any way military objectives.

1021. The Mission also reviewed satellite images showing significant destruction of greenhouses throughout Gaza.[523] In total, it is estimated that over 30 hectares of greenhouses were demolished; 11.2 hectares were destroyed in Gaza City and 9.5 hectares in north Gaza. The Mission found that the large-scale and systematic destruction of greenhouses was not justified by any possible military objective.

3. Destruction of water installations

1022. Finally, in relation to the supply and treatment of water, the Mission analysed a limited number of cases. The strikes on the al-Sheikh Ejlin plant and on the Namar water wells have been described in some detail. The Mission also spoke at length with Mr. Munther Shublaq, who was responsible for the CMWU Damage Assessment Report. That report indicates that all types of water installations appeared to have been damaged to some extent during the Israeli operations, but notes especially that in some areas, particularly Beit Lahia, Jabaliyah, Beit Hanoun, part of Zeytoun, south of Rafah and the villages in the east, buildings, water and wastewater infrastructure and other facilities have been totally destroyed. "Those areas need a complete water and wastewater infrastructure which may require re-designing the networks based on the new population in the area".[524]

1023. Mr. Munther Shublaq noted that, although a number of wells had been struck, the worst effects had been as a result of the damage to water-treatment plants and sewage pipes. The Mission heard a number of reports that indicated that the strikes on plants, pipes, wells and tanks had put considerable pressure on the sanitation and water-supply system.

1024. The Palestinian Authority claimed that 5,708 roof water storage tanks were destroyed, but it is not clear how many of these were on the roofs of the 4,036 houses that the Palestinian Authority stated were destroyed.

1025. The Mission found that the targeting of water-related installations was not justified by any possible military objective.

4. Conclusions

1026. The facts ascertained by the Mission indicate that there was a deliberate and systematic policy on the part of the Israeli armed forces to target industrial sites and water installations. In a number of testimonies given to Breaking the Silence, Israeli soldiers have described in detail the way in which what is at one point euphemistically referred to as "infrastructure work" was carried out. The deployment of bulldozers for systematic destruction is graphically recounted. Soldiers confirm in considerable detail information provided to the Mission by witnesses.[525]

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[523] UNOSAT report, pp. 23–27. See also chapter XVII.

[524] "Damage assessment report…", p. 8.

1027. The Mission refers to chapter XVII, where it found that the systematic destruction of food production, water services and construction industries was related to the overall policy of disproportionate destruction of a significant part of Gaza's infrastructure.

5. General legal findings

1028. The Mission has made detailed findings in relation to each of the incidents set out above. However, given the nature of the systematic attacks on the food, water and infrastructure provision in Gaza during the military operations, the Mission also believes it is important to highlight the issue of State responsibility and the liability of Israel in relation to the internationally wrongful acts committed.

1029. While the element of fault is controversial in the law of State responsibility, the Mission has found that in all of the cases described above both the act and the consequence were intended.

1030. Israel had a number of duties in respect of its actions during the military operations. These included the general obligation reflected in article 52 of Additional Protocol I to ensure that civilian objects are not the objects of attack and to ensure the protection of objects indispensable to the survival of the civilian population. In addition, the customary norms of international law contained in article 54 (2) of Additional Protocol I require States not to destroy objects indispensable to the survival of the population.

1031. Israel displayed a premeditated determination to achieve the objective of destruction. It is, therefore, responsible for the internationally wrongful acts it perpetrated in breach of the duties specified above.

XIV. THE USE OF PALESTINIAN CIVILIANS AS HUMAN SHIELDS

1032. The Mission received allegations that in two areas in north Gaza Israeli troops used Palestinian men as human shields whilst conducting house searches. The Palestinian men were allegedly forced to enter houses at gunpoint in front of or, in one case, instead of soldiers. The Mission investigated four cases. One incident took place in the Izbat Abd Rabbo neighbourhood and another in al-Salam neighbourhood, both east of Jabaliyah, close to the border with Israel. Two incidents took place in al-Israa neighbourhood, west of Beit Lahia. The Mission visited each of the locations and interviewed a number of witnesses. In each case, the Mission found the allegations to be credible.

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[525] See *Soldiers' Testimonies…*, testimony 17 on "infrastructure work" and the razing of orchards, p. 44 and testimony 29, p. 66. Note also testimony 46 on the practice of D-9 armoured bulldozers effectively working around the clock, largely destroying orchards (p. 100). The Mission notes that an issue raised on several occasions was the idea of the "day after" – the circumstances that Israel would find after finishing the military operations in terms of addressing future attacks from Gaza. Even if this could be conceived of as a longer-term strategic military goal, it is not a legitimate one in these circumstances. It does not meet the appropriate test for military advantage in the pursuit of certain objectives. Nor does it meet the test of military necessity referred to in the grave breaches provisions. See also chapter XVI.

A. The case of Majdi Abd Rabbo

1033. To investigate this case, the Mission visited Izbat Abd Rabbo. The Mission interviewed Mr. Majdi Abd Rabbo[526] and several of his neighbours.[527] It also obtained two sworn statements Majdi Abd Rabbo had given to two NGOs.

1034. Majdi Abd Rabbo, a man aged 39 at the time of the incident, is married and the father of five children aged between 16 years and 14 months. He is an intelligence officer of the Palestinian Authority. He lived with his family in a house on the main street of Izbat Abd Rabbo, al-Quds Street, which in this section is commonly known as Izbat Abd Rabbo Street. His family house stood next to Salah ad-Din mosque. The home of the family of Khalid and Kawthar Abd Rabbo (see chap. XI) is less than 500 metres east of the Majdi Abd Rabbo family home.

1035. Majdi Abd Rabbo recounted that, at around 9.30 a.m. on 5 January 2009, he heard loud banging on the outer door of the house. He asked who was at the door and someone responded in Arabic, ordering him to open the door. He opened the door and saw in front of him a handcuffed Palestinian man, whom he later found out to be HS/07, aged 20. A group of around 15 Israeli soldiers stood behind HS/07. One of the soldiers was holding a weapon to HS/07's head. The soldiers pushed HS/07 to one side and four soldiers pointed their weapons at Majdi Abd Rabbo. They ordered him to undress down to his underwear. He was then told to dress again and they pushed him into the house.

1036. The soldiers ordered him to call his children one by one. He started with his eldest son, aged 16, who was ordered by the soldiers to strip naked. The same process was followed with the two other sons, aged nine and eight. He then called his daughter, aged 14, who was told to press her clothes to her body and turn around. His wife, who was holding their baby daughter, was also told to press her clothes to her body, and then to take the baby's trousers off.

1037. Majdi Abd Rabbo stated that the soldiers then forced him to walk in front of them as they searched the house, room by room, holding a firearm to his head. They questioned him about the house behind his. He told them that the house was empty and the owner, HS/08, had been absent for four years working in the Sudan. There was a small gap between the two houses, but they were joined at the roof. The soldiers gave him a sledgehammer, the kind used to break stones, and told him to break a hole through the dividing wall into HS/08's house. This took around 15 minutes.

1038. From the roof, the soldiers entered HS/08's house, pushing Majdi Abd Rabbo ahead of them down the stairs while they watched over his shoulders. They had descended only a few steps, however, when the soldiers apparently detected some movement in the house, started shouting, pulled Majdi Abd Rabbo back and rushed back into his house over the roof. Majdi Abd Rabbo heard some gun shots.

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[526] Mission interview with Majdi Abd Rabbo.

[527] Mission interviews with Muhammad Muhammad Abd Rabbo, Muhammad 'Aish Muhammad Abd Rabbo, witness HS/11 and Iyad Abd Rabbo.

1039. The soldiers ran out into the street, forcing Majdi Abd Rabbo and HS/07 with them while they were shooting. Both were taken into the adjacent mosque, where there were a large number of soldiers with military equipment. They were forced to sit down and then handcuffed.

1040. The soldiers used the raised area of the mosque, from where the imam leads prayers, to fire at Majdi Abd Rabbo's house and the houses next to it. He shouted at the soldiers to stop, as his family was still in the house. A soldier told him to shut up or they would shoot him. The shooting continued for around 30 minutes. After a lull, the soldiers warned that there would be a huge explosion and, indeed, about three minutes later there was a huge explosion. The explosion was followed by intensive gunfire and artillery shells. Majdi Abd Rabbo could not identify the source of the explosion.[528]

1041. In the meantime, he had been forced to break a hole in the wall of the mosque on the south side and into the neighbouring house. He had then been interrogated about his knowledge of Hamas and the location of tunnels. Subsequently, he was taken and detained together with a group of neighbours, men and women, in another house in the neighbourhood (the HS/09 family home).

1042. When the shooting stopped, soldiers came to fetch him. He was taken to the road next to his house, to an empty area behind HS/08's house. He saw that HS/08's house and the entrance area of his house had been damaged. There were numerous soldiers standing next to the house, including some officers. He saw a senior officer talking to the soldiers who raided his house, and the officer then came to speak to him, through an Arabic-speaking soldier. The soldier said that they had killed the fighters inside the house and told him to go into the house and come back with their clothes and weapons. He protested, saying that he just wanted to find out if his family was safe. The officer told him to obey their orders if he wanted to see his family again. He refused to go, and was kicked and beaten by soldiers with their weapons until he gave in.

1043. He approached HS/08's house from the street. The entrance was destroyed and blocked by rubble. He went back to the officer and told him that he could not get in. The officer told him to go through the roof instead. He went into his own house, which he found empty, except for a soldier. This reinforced his anxiety about the fate of his family. At this point, there was no major damage to his house. He crossed the roof and went down the stairs into HS/08's house. He was scared that the fighters would shoot at him and shouted, "I am a Palestinian, a neighbour. I am being forced to come into this house." In a room at the bottom of the stairs he found three armed young men wearing military camouflage and headbands of al-Qassam Brigades. They pointed their weapons at him. He told them that the Israeli soldiers thought that they had been killed and had sent him to check. He said that he was helpless as the soldiers had taken his wife and children. The armed men told him that they had seen everything, and asked him to go back to the soldiers and tell them what he had seen.

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[528] Other sources clarify that HS/08's house had been bombed by Israeli aircraft which had been called in by the soldiers in the mosque. Jerusalem Center for Public Affairs, "The hidden dimension of Palestinian war casualties in operation 'cast lead': Hamas fire on Palestinian areas", p. 20; *Soldiers' Testimonies...*, p. 7 ("The [combat] helicopters fired anti-tank missiles" according to testimony 1, which in this part appears to repeat an account heard from other soldiers).

1044. He went back outside, again crossing over the roof of his house. As he approached the soldiers, they pointed their weapons at him and ordered him to stop, strip naked and turn around. After he dressed again, he told them what he had seen. Initially, the soldiers did not believe him. They asked how he knew that they were Hamas militants and he explained about their headbands. The soldiers asked about their weapons. He replied that they were carrying Kalashnikovs. The officer told him that, if he was lying, he would be shot dead.

1045. He was handcuffed and taken back to the HS/09 family house for detention. At around 3 p.m., he heard gunfire for around 30 minutes. The soldiers came back for him and took him to the same officer. This time he noticed different soldiers present with different military equipment. Through the translator, the officer told him that they had killed the militants, and told him to go in and bring back their bodies. Again he refused, saying "this is not my job, I don't want to die." He lied to them, saying that the three militants had told him that if he came back, they would kill him. The officer told him that, as they had already killed the militants, he should not worry. He added that they had fired two missiles into the house, which must have killed the militants. When he still resisted, he was beaten and kicked again, until he went into HS/08's house via the roof again.

1046. He found the house very badly damaged. The bottom part of the stairs was missing. He again went in shouting, to alert the militants if they were still alive. He found them in the same room as before. Two were unharmed. The third was badly injured, covered in blood, with wounds to his shoulder and abdomen. They asked him what was going on outside and he told them that the area was fully occupied and the soldiers had taken numerous hostages, including his family.

1047. The wounded man gave him his name (HS/10) and asked him to tell his family what had happened. Majdi Abd Rabbo promised to do so if he survived and later did so. Another of the three told him to tell the Israeli officer that, if he was a real man, he would come to them himself.

1048. Majdi Abd Rabbo returned to the soldiers, who again forced him to strip naked before they approached him. He told the officer that two of the militants were unharmed. The officer swore at him and accused him of lying. Majdi Abd Rabbo then repeated the message from the militant, at which the officer and four other soldiers assaulted him with their weapons and insulted him.

1049. The officer asked Majdi Abd Rabbo for his identity card. He replied that it was in his house but gave him the ID card number. The officer checked the number via an electronic device. Three minutes later the officer asked him if it was true that he worked with the head of Palestinian Authority's intelligence services, which he confirmed. The officer asked him if he was with Abu Mazen and a Fatah affiliate. He said he was.

1050. The soldiers brought Majdi Abd Rabbo a megaphone and told him to use it to call the militants. He initially refused but did so under threat. As instructed, he told the militants to surrender, that ICRC was present and they could hand themselves over. There was no response.

1051. By then, night had fallen. Majdi Abd Rabbo was again handcuffed and taken back to the house of the HS/09 family. Thirty to forty minutes later, he heard shooting and a huge explosion. Soldiers came to tell him that they had bombed HS/08's house and ordered him to go in again and check on the fighters.

1052. The Israeli armed forces had floodlit the area. Majdi Abd Rabbo found both his and HS/08's house very badly damaged. He could not use the roof of his house to enter HS/08's house, as it had collapsed. He went back to the soldiers, who again made him strip, this time to his underwear. He asked where his family was and said that he could not reach the fighters because of the damage to the houses. He accused the soldiers of destroying his house. The officer said that they had only hit HS/08's house. Majdi Abd Rabbo was then handcuffed. Until this time, he had been given no food or water, and it was very cold. After a while, his handcuffs were removed, he was told to dress and taken back to the HS/09 family house, to the room where he found that other people were being held. All the men and boys in this room were handcuffed and their ankles were tied. A soldier came with some drinking glasses and smashed them at the entrance to the room where they were being held. After smashing the glasses, he left again. Majdi Abd Rabbo had developed a severe headache. Another detainee, who spoke Hebrew, called a soldier to say that Majdi Abd Rabbo was sick and needed medicine. The soldier told him to keep quiet or he would be shot. A woman tied a scarf around Majdi Abd Rabbo's head to ease the pain.

1053. At around 7 a.m., Majdi Abd Rabbo was taken back to the soldiers outside. He was questioned about the number of fighters in the house. He confirmed that he had seen only three.

1054. Two young Palestinian men from the neighbourhood were brought over. A soldier gave them a camera and told them to go into the house and take photos of the fighters. The two tried to refuse, and were beaten and kicked. The soldier showed them how to use the camera and they went into HS/08's house through the damaged main entrance. About 10 minutes later, they came back with photos of the three fighters. Two appeared to be dead, under rubble. The third was also trapped by rubble but appeared to be alive and was still holding his firearm. A soldier showed Majdi Abd Rabbo the photos and asked if these were the same people. He confirmed they were.

1055. A soldier took the megaphone and told the fighters that they had 15 minutes to surrender, that the neighbourhood was under the control of the Israeli armed forces and that, if they did not surrender, they would hit the house with an air strike.

1056. Fifteen minutes later, a soldier came with a dog, which had electronic gear attached to its body and what looked like a camera on its head. Another soldier had a small laptop. The dog handler sent the dog into the house. A few minutes later, shots were heard and the dog came running out. It had been shot and subsequently died.

1057. At around 10.30 a.m. on 6 January 2009, a bulldozer arrived and started to level the house. The bulldozer moved from east to west, demolishing everything in its way. Majdi Abd Rabbo watched it demolish his own house and HS/08's house. He and the two young men were told to go back to the HS/09 house. They heard shooting.

1058. At around 3 p.m., he was taken back close to the site of his and HS/08's house. He told the Mission that he saw the bodies of the three fighters lying on the ground in the rubble of the house.

1059. The soldiers then forced him to enter other houses on the street as they searched them. All the houses were empty. The soldiers forced him to go into the house alone initially and, when he came out, sent in a dog to search the house. During the house searches he managed to find some water to drink, the first drink he had had for two days. At midnight, the soldiers took him back to the HS/09 family house.

1060. On 7 January, all the men and boys were taken from the HS/09 family house and transferred to the house of a cousin of Majdi Abd Rabbo's in the same neighbourhood. There were more than 100 men and boys, including members of his extended family, aged between 15 and 70. The women were being held elsewhere. Majdi Abd Rabbo's immediate family members were not there, and he learnt that no one had seen them. He remained extremely anxious about their safety.

1061. At around 11 p.m., the men and boys in that house were told that they were going to be released, and that they should all walk west towards Jabaliyah, without turning left or right, on threat of being shot. They found Izbat Abd Rabbo Street severely damaged. Majdi Abd Rabbo went to his sister's house in Jabaliyah, where he was reunited with his wife and children on 9 January 2009. His wife then told him that they had stayed for some hours in the house, during the first shooting on 5 January, and had then fled with a white flag to a neighbour's house.

1062. Majdi Abd Rabbo told the Mission that he and his family were traumatized by what had happened to them and did not know what to do now, having lost their home and all their possessions. His children were all suffering psychologically and performing poorly at school. Five months later, in June 2009, Majdi Abd Rabbo was still having nightmares.

1063. The Mission notes that his account to it implies that there were at least three other Palestinian men compelled by the Israeli armed forces to search houses. A journalist's account indicates that the author "spoke with eight residents of Izbat Abd Rabbo neighbourhood, who testified that they were made to accompany IDF soldiers on missions involving breaking into and searching houses […]. The eight estimated that about 20 local people were made to carry out "escort and protection" missions of various kinds, […], between January 5 and January 12."[529]

B. The case of Abbas Ahmad Ibrahim Halawa

1064. The Mission interviewed Mr. Abbas Ahmad Ibrahim Halawa and his wife,[530] and visited al-Israa, the neighbourhood west of Beit Lahia, where his house is located.

1065. When hostilities started on 27 December 2008, Abbas Ahmad Ibrahim Halawa, aged 59, asked his family to leave the home and stayed behind alone. On 9 January 2009, after a day of shelling, the ground forces invaded the north-west of his neighbourhood. At around 0.05 a.m. on 5 January 2009, the Israeli armed forces stormed into his house. He was hiding under the staircase and screamed when they reached him, putting his hands in the air. The soldiers had torch lights on their rifles and helmets, and their faces were painted black.

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[529] Haaretz, "Gazans: IDF used us as 'human shields' during offensive", 28 March 2008, available at: http://www.haaretz.com/hasen/spages/1065594.html.

[530] Mission interviews with Abbas Ahmad Ibrahim Halawa and his wife.

1066. At gunpoint, the soldiers ordered him to take off his clothes, which he did except for his underwear. They made him turn around and ordered him to dress again. By this time there were some 40 soldiers in the house. His hands were tied behind his back, his legs were tied and he was blindfolded. He was severely beaten. He was then taken to a neighbour's house. He told the soldiers that he had bad asthma, but they would not allow him to take his inhaler.

1067. In the neighbour's house, he was questioned by an Israeli officer about the whereabouts of Gilad Shalit and the location of Hamas tunnels and rocket launch sites. The soldiers threatened to blow up his house if he did not tell them. He insisted that he did not know the answers to their questions. He pleaded that he had worked in Israel for 30 years and had built hundreds of houses there. He speaks fluent Hebrew and communicated with the soldiers in Hebrew.

1068. After about 30 minutes, he was taken to a different location in the vicinity and made to sit down. After another 15 minutes, he was again made to walk to a different location. He was still blindfolded; the ties binding his legs had been loosened slightly, but walking was difficult. One of the soldiers was directing his footsteps while holding him at gunpoint.

1069. In a house that he subsequently recognized as that of a neighbour, one of the soldiers untied his legs and the blindfold. His hands remained tied. He saw a number of soldiers in the house and around 15 officers sitting in the living room. They had maps and radios in front of them. One of the officers (there were three stripes on the shoulder of his uniform) asked him to identify his house on the map, and then asked him about the location of tunnels and rocket launching sites. He answered that he did not know. He was blindfolded again but he could see a little through the blindfold.

1070. He was then taken out of the house and onto the road. As previously, he was held from behind, a weapon pressed against his back or the back of his head. Due to the damage to the roads caused by the tanks and other military equipment, walking was difficult. For about two hours he walked around as directed by the soldiers. They would stop and call: "Who is in the house?" They would then open fire, force Abbas Ahmad Ibrahim Halawa to go into the house while they were gathering behind him, and then leave the house again after the search. He was made to go into five houses in this way. They did not find anyone in any of the houses.

1071. Thereafter, they walked and stopped for about an hour without any shooting. Finally, he was ordered to sit down on the ground and covered with a blanket. He was held for two days at this location, which he identified to be near the American School in north Gaza, close to an Israeli armed forces' tank position. During the two days he was given neither food nor water.

1072. He was then transported, blindfolded, in what he believes was a tank, for about 90 minutes to another location which he believes was Netsalim (Nitzarim), where he was thrown on the ground. He was kept there for two days and nights in the open, during which time the soldiers refused to give him a blanket. During the two days he was again interrogated several times about the location of Hamas tunnels and rockets, and about Gilad Shalit's whereabouts. He was beaten and threatened with death if he did not provide the information.

1073. At around 5 p.m. on the second day he was taken in a closed vehicle, which he believes was a truck, to a detention centre inside Israel, which he heard a soldier refer to as Telmund. He was fingerprinted and taken to see a doctor, whom he told that he was suffering from acute asthma and severe pain from a back injury caused by the beating.[531] The doctor did not give him medication. He was placed in a cell, where he was again refused a blanket.

1074. He was interrogated again at the detention centre, this time by civilians and then transferred to another location, where he was held together with some 50 Arabs. After two days, he was taken to the Erez border crossing and told to walk back into Gaza. Soldiers shot around his feet and over his head as he walked. He managed to reach his sister's house, where he collapsed and was taken to al-Shifa hospital.

1075. When he returned to his house, he found it vandalized. When the Mission spoke to him, he was still traumatized from the treatment he had undergone at the hands of the Israeli armed forces.

C. The case of Mahmoud Abd Rabbo al-Ajrami

1076. Mr. Mahmoud Abd Rabbo al-Ajrami was interviewed twice, at length, by the Mission. He also testified at the public hearing in Gaza on 30 June 2009.

1077. Mahmoud Abd Rabbo al-Ajrami is a former civil servant, whose last position was as Assistant Foreign Minister. He resigned from the Ministry when Hamas took over Gaza and has not worked since. He, his wife and 15-year-old daughter lived in a house in the same neighbourhood west of Beit Lahia as Abbas Ahmad Ibrahim Halawa. The area was shelled during the initial air strikes of the Israeli campaign. Mahmoud Abd Rabbo al-Ajrami's home was directly hit for the first time on 2 or 3 January 2009, according to him by tank shells and by missiles fired by Apache helicopters, which seriously damaged external and internal walls. Tanks came into the area on 3 or 4 January and initially were positioned around 500 metres north of his house.

1078. He stayed in the house with his wife and daughter. As he told the Mission, he had decided not to leave because of his father's experience of leaving his home in Israel and not being able to return. On an unspecified date during the first week of January, however, he decided that this was proving too difficult for his daughter. He called a taxi and his daughter moved to the house of an uncle in a safer area.

1079. On 9 January 2009, shelling of the area was particularly intensive. According to Mahmoud Abd Rabbo al-Ajrami, 10 tank shells hit his house. His wife received light injuries from shrapnel and broken glass. In the night of 9 to 10 January 2009, around midnight, soldiers made a violent entry into their home, where he and his wife were sheltering on the ground floor, underneath the stairs. They threw a grenade into the entrance on the west side of the building and entered the house shooting.

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[531] The Mission was provided medical documentation supporting his statement that he suffered two fractured vertebrae as a result of the beating by Israeli soldiers. He now has to wear a corset to support his spine.

1080. An officer ordered Mahmoud Abd Rabbo al-Ajrami to lift his robe (he was in nightclothes) and turn around. He then told Mahmoud Abd Rabbo al-Ajrami's wife to press her clothes close to her body and turn around. Mahmoud Abd Rabbo al-Ajrami and his wife were then taken to a neighbouring house where soldiers took his identity card and checked his identity on a laptop computer. An officer interrogated him about the location of Hamas tunnels, rockets, Palestinian fighters and Gilad Shalit. He responded that he could not provide that information because he did not know, that he was previously a member of the Fatah administration. The soldier responded: "You are Hamas; Hamas killed all Fatah and others in Gaza, so you must be Hamas." Mahmoud Abd Rabbo al-Ajrami insisted that he was a civilian The officer told him again that he had five minutes in which to give him information or he would be shot. Five minutes later, he again responded that he did not know anything about the questions asked.

1081. He was handcuffed with his hands in front of him and blindfolded. Two or three soldiers took him by the shoulders and forced him to walk in front of them. His wife tried to go with him but they pushed her back into the room. It was by now around 2 a.m. The soldiers took him up to the second floor of the building and threw him down. He landed on rubble and fainted. When he came to, he had severe pain in his right side and had difficulty breathing. He found out later that he had broken four ribs and he had severe bruising down his right leg. Four soldiers forced him to stand. He was moaning with the pain but did not want them to hear. It was raining and still dark. The soldiers pushed him against a wall and walked away from him. He thought that they were going to shoot him. He was still blindfolded.

1082. In the early morning hours, the soldiers took him and another man (whom he subsequently found out to be his neighbour Abbas Ahmad Ibrahim Halawa) and forced them to walk in front of them. Mahmoud Abd Rabbo al-Ajrami was blindfolded and a gun was held to the back of his head. He thinks that there were around 25 soldiers behind him and the other Palestinian man. Having walked in this way for a while, both he and the other man were forced to enter several houses with the soldiers taking cover behind them. In Mahmoud Abd Rabbo al-Ajrami's recollection, on six or seven occasions the soldiers opened fire. They did not find anyone in any of the houses.

1083. After these house searches, the soldiers, Mahmoud Abd Rabbo al-Ajrami and Abbas Ahmad Ibrahim Halawa walked north towards a place called Dogit, a former settlement. He could hear the movement of tanks and see tank positions. Both men were forced to sit on the ground. Mahmoud Abd Rabbo al-Ajrami had his hands handcuffed in front; the other man had his hands handcuffed behind him. It was still raining, very cold, and Mahmoud Abd Rabbo al-Ajrami's ribs and leg were very stiff and painful. They were left there without food, water or blankets until morning. At around 10 a.m., soldiers took Abbas Ahmad Ibrahim Halawa for interrogation.

1084. During that and the following day, Mahmoud Abd Rabbo al-Ajrami was also interrogated, by a senior officer. On the second day, he was taken to the edge of the camp and told to walk back south into Gaza City. He was able to reach the outskirts of the city and was helped by a stranger to reach a family member's house, from where he was taken to al-Shifa hospital.

1085. On returning to his house, he found it ransacked and vandalized. He recounted that many items of value had been stolen, including jewellery and electronic equipment.

D. The case of AD/03

1086. The summary of AD/03's case is based on his interview by the Mission. His case is also discussed in chapter XV, which gives more details on his case.

1087. AD/03 is a resident of al-Salam neighbourhood, located east of Jabaliyah, close to the eastern border with Israel. On 8 January, at around noon, the Israeli armed forces made an announcement ordering all residents of the area to evacuate their homes and come out in the street. The men were separated from the women and children, the men being told to line up against a wall. They were told to lift their shirts and to strip to their underwear. They remained in that position, stripped and lined up against the wall for approximately 15 minutes. The women and children were told to go to Jabaliyah. Shortly afterwards, AD/03 and three others (his brother, a cousin and an unknown man) were made to lie on the ground, were blindfolded and their hands were tied behind their backs with plastic strips. They were detained overnight in a house, in a room together with three men who identified themselves as residents of Izbat Abd Rabbo. The next morning, on 9 January, their blindfolds were removed and the seven men were interrogated.

1088. On the second day of detention, the Israeli armed forces began to use a number of the detainees as human shields. At this point the detainees had been without food and without sleep for a day. There were constant death threats and insults. To carry out house searches, the Israelis took off AD/03's blindfold but he remained handcuffed. He was forced to walk in front of the soldiers and told that, if he saw someone in the house but failed to tell the Israeli soldiers, he would be killed. He was instructed to search each room in each house cupboard by cupboard. After one house was completed, he was taken to another house with a gun pressed against his head and told to carry out the same search there. He was punched, slapped and insulted throughout the process. AD/03 indicates that he was forced to do this twice while the group was held in this house for eight days. Others were also required to do it. On the first occasion he was forced to carry out searches in three houses and on the second occasion in four houses. AD/03 estimates that each time he was involved in searches for between one hour and one and a half hours. At no point did he come across any explosive devices or armed group members.

E. Denial of the allegations by the Israeli armed forces

1089. Reacting to reports of the use of civilian men as human shields in Izbat Abd Rabbo, the Israeli armed forces' Spokesperson's Unit told an Israeli journalist:

> The IDF is a moral army and its soldiers operate according to the spirit and values of the IDF, and we suggest a thorough examination of the allegations of Palestinian elements with vested interests. The IDF troops were instructed unequivocally not to make use of the civilian population within the combat framework for any purpose whatsoever, certainly not as "human shields."
>
> Following an examination with the commanders of the forces that were in the area in question, no evidence was found of the cases mentioned. Anyone who tries to accuse

> the IDF of actions of this kind creates a mistaken and misleading impression of the IDF and its fighters, who operate according to moral criteria and international law.[532]

F. Factual findings

1090. The Mission found the foregoing witnesses to be credible and reliable. It has no reason to doubt the veracity of their accounts and found that the different stories serve to support the allegation that Palestinians were used as human shields.

1091. The Mission notes in particular that Mr. Majdi Abd Rabbo has told the story of his experience from 5 to 7 January 2009 to several NGOs, to several journalists and to the Mission without any material inconsistencies. There are some minor inconsistencies, which are not, in the opinion of the Mission, sufficiently weighty to cast doubt on the general reliability of Majdi Abd Rabbo. There are also, not surprisingly, some elements of the long account which appear in some versions and not in others. The Mission finds that these inconsistencies do not undermine the credibility of Majdi Abd Rabbo's account.

1092. The Mission further notes that one of the Israeli soldiers interviewed by the NGO Breaking the Silence recounts the case of Majdi Abd Rabbo. The soldier describes the case in great detail and mentions having personally met Majdi Abd Rabbo.[533] Finally, the Mission notes that the submission it has received from the Jerusalem Center for Public Affairs, while not containing a summary of Majdi Abd Rabbo's role in the incident in which the three Palestinian fighters were killed, also refers to the incident.[534]

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[532] "Gazans: IDF used us as 'human shields' during offensive".

[533] The Mission notes, however, that the soldier does not appear to have been a direct witness to the incident, but rather heard it from others and subsequently met Majdi Abd Rabbo. *Soldiers' Testimonies...*, pp. 7-8:

"Testimony 1 [...] In one case, our men tried to get them to come out, then they opened fire, fired some anti-tank missiles at the house and at some point brought in a D-9, bulldozer, and combat helicopters. There were three armed men inside. The helicopters fired anti-tank missiles and again the neighbour was sent in. At first he told them that nothing had happened to them yet, they were still in there. Again helicopters were summoned and fired, I don't know at what stage of escalation (in the use of force). The neighbour was sent in once again. He said that two were dead and one was still alive, so a D-9 was brought in and started demolishing the house over him until the neighbour went in, the last armed man came out and was caught and passed on to the Shabak. [...] [Some civilians] were made to smash walls with 5-kilo sledgehammers. There was a wall around a yard where the force didn't want to use the gate, it needed an alternative opening for fear of booby-traps or any other device. So the "Johnnies" themselves were required to bang open another hole with a sledgehammer. Talking of such things, by the way, there was a story published by Amira Hass in Haaretz daily newspaper, about Jebalya where a guy tells exactly the same thing. It's the guy who was sent. I saw him afterwards, the guy who was made to go into that house three times. He also told us about being given sledgehammers to break walls."

The newspaper article referred to by this testimony is "Gazans: IDF used us as 'human shields' during offensive". The Mission notes that the soldier who gave testimony 1 states that one of the three Palestinian combatants was arrested, while Majdi Abd Rabbo's testimony is that he saw all three of them dead.

[534] "The hidden dimension..." p. 20. This submission is a "war diary" pieced together "from detailed data that both Hamas and its Izz ad-Din Qassam Brigades have published." That this incident and the story of Majdi Abd Rabbo are the same is corroborated by comparing the three names of the killed Palestinian combatants mentioned in both accounts (one name is identical, the second very similar).

1093. In more general terms, the Mission notes that the statements of the men used as human shields by the Israeli armed forces during house searches are corroborated by statements made by Israeli soldiers to the NGO Breaking the Silence. The soldier providing testimony 1 speaks of the "Johnnie procedure": "It was the first week of the war, fighting was intense, there were explosive charges to expose, tunnels in open spaces and armed men inside houses. […] Close in on each house. The method used has a new name now – no longer 'neighbour procedure.' Now people are called 'Johnnie.' They're Palestinian civilians, and they're called Johnnies […] To every house we close in on, we send the neighbour in, 'the Johnnie,' and if there are armed men inside, we start, like working the 'pressure cooker' in the West Bank." This soldier then mentions that some commanders were "bothered" by the fact that "civilians were used to a greater extent than just sending them into houses." A second soldier interviewed by Breaking the Silence, testimony 17, appears to have discussed the "Johnnie procedure" at length, but his testimony was censored or otherwise cut in that respect, so that we can only read: "They [civilians found in houses] were used as 'Johnnies' (at a different point in the interview the witness described the 'Johnnie' procedure, using Palestinian civilians as human shields during house searches), and then released, and we're finding them in later searches."[535]

1094. The Mission thus finds that while these testimonies do not confirm the details of the specific cases it investigated, they strongly support the general allegation that the Israeli armed forces engaged in the practice of compelling Palestinian civilians to accompany them on house searches.

1095. In conclusion, from the facts it gathered, the Mission finds that Messrs. Majdi Abd Rabbo, Abbas Ahmad Ibrahim Halawa, Mahmoud Abd Rabbo al-Ajrami and AD/03 were captured by the Israeli armed forces while they were in their homes, in some cases together with their families, and were then forced at gunpoint to search houses together with the Israeli armed forces. The Mission also finds on the basis of those facts that they were all subject to cruel, inhuman and degrading treatment during their captivity.

G. Legal findings

1096. Several provisions of international humanitarian law prohibit the practice of using civilian men captured by the armed forces to search houses in which the invading army suspects the risk of ambushes or booby traps.

1097. This practice constitutes the use of involuntary human shields and is a violation of article 28 of the Fourth Geneva Convention which reads: "The presence of a protected person may not be used to render certain points or areas immune from military operations." Article 51, paragraph 7, of Additional Protocol I (set out in full in chapter VIII above) adds that "the presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations." The prohibition of the use of human shields also has customary law status (rule 97 of the ICRC rules of customary humanitarian law[536]), both in international and in non-international armed conflict. The Mission, therefore, finds that the Israeli armed forces have violated article 28 of the Fourth Geneva Convention and the prohibition under customary international law that the civilian population as such will not be the object of attacks, as reflected in article 51 (2) of Additional Protocol I.

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[535] *Soldiers' Testimonies*…, pp. 7–8 and 46. A third soldier recounts discussing the use of Palestinian civilians with his unit commander. The unit commander denied knowing about this, but the soldier concludes: "This procedure of using civilians exists, he knows about this. 'Neighbour procedure' is an official army procedure; it's just not called that any longer. The brigade commander was on the ground the whole time. He even came to visit us one day. An official army procedure means army instructions." Ibid., p. 107.

1098. In 2002, the Israeli Supreme Court sitting as the High Court of Justice was seized of a case regarding the use of a very similar practice in the West Bank, at the time known as the "neighbour procedure". The petitioners, seven Israeli and Palestinian human rights organizations, described cases in which "the IDF forced Palestinian residents to walk through and scan buildings suspected to be booby-trapped, and in which it ordered them to enter certain areas before the combat forces, in order to find wanted persons there; also described are cases in which the army used residents as a "human shield" which accompanied the combat forces, to serve as a shield against attack on those forces. […] Further described were cases in which local residents were asked about the presence of wanted persons and weapons, under threat of bodily injury or death, should the questions go unanswered."[537] In other words, the petitioners described incidents analogous to those investigated by the Mission in Gaza.

1099. In their response to the petition, the Israeli armed forces and other respondents "clarified unequivocally that they recognize that the forces operating in the field are categorically forbidden from using Palestinian residents as a 'live shield' or as 'hostages', and that involving local residents in any activity exposing them to danger to life or limb is prohibited."[538] The Israeli armed forces also submitted to the High Court of Justice a directive regarding the use of the so-called "early warning" procedure. This procedure relied on the allegedly exclusively voluntary cooperation of Palestinian civilians to give wanted persons a warning to turn themselves in. The directive states that "it is strictly forbidden to use the local resident in military missions (e.g. locating explosive charges, intelligence gathering)." It also provides "it is strictly forbidden to use a local resident as a 'live shield' against attack. Thus, during the advance of the force, accompanied by the local resident, the latter is not to be positioned at the head of the force."[539]

1100. As a result of these assurances given by the Israeli armed forces, the High Court of Justice did not rule on the so-called neighbour procedure, but on the "early warning" procedure. In its ruling, it found that the "early warning" procedure was also "at odds with international law" and ordered the armed forces to desist from any further use of the procedure.[540] In reaching this outcome, Supreme Court President A. Barak left no doubt that he considered the "neighbour procedure" to violate article 28 of the Fourth Geneva Convention. He quotes approvingly from J. Pictet's *Commentary* to the Fourth Geneva Convention, in which it is stated that "such practices [the use of human shields], the object of which is to divert enemy fire, have rightly been condemned as cruel and barbaric".

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[536] *Customary International Humanitarian Law*..., p. 337. The Israeli Government recognizes the customary nature of the principle enshrined in Additional Protocol I, article 51 (7) ("The operation in Gaza…", para. 151).

[537] Adalah Legal Centre for Arab Minority Rights in Israel et al. v. Commander of the Central Region et al., case No. 3799/02, Judgement of 23 June 2005.

[538] Ibid., Opinion Justice D. Beinisch.

[539] Ibid., para. 7.

1101. When reporting on its military operations in Gaza, the Israeli Government stated:

> IDF's rules of engagement strictly prohibit the use of civilians as human shields. Moreover, the Israel Supreme Court has ruled that use of civilians in any capacity for the purpose of military operations is unlawful, including the use of civilians to call terrorists hiding in buildings. Following this judgement, this latter practice has also been proscribed by IDF orders. The IDF is committed to enforcing this prohibition.
>
> The IDF took a variety of measures to teach and instil awareness of these rules of engagement in commanders and soldiers.[541]

The Israeli Government does not, however, in any way mention the very specific allegations of use of Palestinian civilians as human shields in January 2009 which have been in the public domain since they were published in an Israeli newspaper in March 2009[542] and in NGO reports from April 2009 onwards, and which have been brought to the attention of the Attorney-General of Israel in letters by Israeli NGOs.

1102. The Mission further finds from the facts available to it that the conduct of the Israeli armed forces in the cases above violates article 31 of the Fourth Geneva Convention. This provision dictates that "no physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties." The ICRC Commentary notes that "article 31 prohibits coercion for any purpose or reason and the obtaining of information is only given as an example. Thus, the custom, hitherto accepted in practice but disputed in theory, that an invasion army may force the inhabitants of an occupied territory to serve as 'guides' is now forbidden."[543]

1103. The questioning of civilians under threat of death or injury by Israeli soldiers, who demanded information about Hamas and the location of Palestinian combatants and tunnels, also constitutes a violation of article 31. The Mission has no information on cases in which such a threat was actually followed by the killing of a captured civilian. However, Messrs. Majdi Abd Rabbo, Abbas Ahmad Ibrahim Halawa and Mahmoud Abd Rabbo al-Ajrami, all claim that they were threatened with execution. Majdi Abd Rabbo also claimed that he was kicked and beaten by soldiers until he gave in to their request to enter the house of HS/08. Mahmoud Abd Rabbo al-Ajrami was thrown from the second floor of his house after refusing to provide information to Israeli soldiers, resulting in several broken ribs.

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[540] Ibid., para. 25.

[541] "The operation in Gaza…", paras. 227-228.

[542] "Gazans: IDF used us as 'human shields' during offensive".

[543] p. 220.

1104. The use of the "neighbour procedure", now apparently renamed "Johnnie procedure", constitutes a violation of fundamental human rights norms. It puts the right to life of the civilians concerned, protected in article 6 of ICCPR, at risk in an arbitrary and unlawful way. The anguish to which civilians who, blindfolded and handcuffed, are forced at gunpoint to enter houses which – this is the reason they are forced to enter the houses – might be booby-trapped or harbour combatants who might open fire on them, can only be described as cruel and inhuman treatment prohibited by article 7 of ICCPR. Furthermore, the witnesses were all deprived of liberty and the security of their person violated. This also constitute a violation of article 9 of ICCPR. The Mission must state that numerous civilians who came into contact with the Israeli armed forces during the military operation recounted shocking stories of humiliation that would certainly be in stark contravention of the principle of respect for human dignity, which forms the core of all human rights and fundamental freedoms.

1105. The Mission also finds that the intentional use as human shields of those whose accounts are presented above qualifies as inhuman treatment of and wilfully causing great suffering to protected persons under the Fourth Geneva Convention. As such, the Mission considers the conduct of the Israeli armed forces in relation to such persons to amount to grave breaches of the said Convention. The use of human shields is also a war crime under article 8 (2) (b) (xxiii) of the Rome Statute.

1106. Finally, the Mission finds that obliging Majdi Abd Rabbo to use a megaphone to call on the men trapped in the house behind his to surrender, on the grounds that ICRC was present and they could safely hand themselves over, qualifies as a violation of article 37 of Additional Protocol I of the Geneva Conventions, which prohibits perfidy. At the time, the Izbat Abd Rabbo area was a closed military zone into which no one, including ICRC, was permitted to enter. Perfidy is defined by article 37 as "acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence". Acts amounting to perfidy resulting in death or serious personal injury are also a war crime under article 8 (2) (b) (vii) of the Rome Statute.

XV. DEPRIVATION OF LIBERTY: GAZANS DETAINED DURING THE ISRAELI MILITARY OPERATIONS OF 27 DECEMBER 2008 TO 18 JANUARY 2009

1107. According to information that the Mission received, hundreds of Gazans, including women and children, were detained by the Israeli armed forces during the military operations. Their exact number is not known. Some were held for hours or days in homes, other buildings or sandpits in the Gaza Strip; others were taken into detention in Israel, either immediately or after an initial period of detention in the Gaza Strip. A number of people were held in army bases (e.g. Sde Teiman[544]), others were held in prison, and some released detainees do not know where they were held. Some detainees have reported abuse during detention, including beatings, and being kept in unsanitary conditions, without any or with only inadequate food or toilet facilities. Some released persons have reported that they were used as human shields during their detention, for example, forced to walk in front of soldiers and enter buildings ahead of soldiers.[545]

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[544] Correspondence with HaMoked, 22 July 2009. See also the testimony of AD/06 taken by Addameer, Prisoners Support and Human Rights Association.

1108. On 28 January 2009, seven Israeli human rights organizations appealed to the Israeli Military Judge Advocate General and to the Attorney General, concerning the "appalling conditions in which Palestinians arrested during the fighting in Gaza were held, and the humiliating and inhuman treatment to which they were subjected from the time of their arrest until their transfer to the custody of the Israel Prison Service."[546]

1109. The number of detainees that were eventually taken to Israeli prisons has been estimated at around 100.[547] Some of them have since been released. It often took the families and lawyers several weeks to find out that their loved ones or clients were being detained. Some lawyers have alleged that Israel deliberately did not disclose the number of detentions, even to ICRC.[548] Human rights organization Adalah have filed a freedom of information request to the Government, but at the time of writing this report is yet to receive a response. Eventually many were released by the Israeli Prison Service but the Mission is not in a position to determine the exact number.

1110. A PCATI lawyer representing detainees, Mr. Bader, who spoke at the Mission's public hearings in Geneva, interviewed a number of the detainees in Israeli prisons and relayed their testimonies. These include stories from prisoners who said they were used as human shields or held in sandpits.

1111. The Mission has interviewed a number of persons who were detained by the Israeli armed forces for substantial periods of time during the military operations in Gaza and thereafter. In the course of that detention they were in some cases held without trial or respect for basic due process guarantees, and were mentally and physically abused. The Mission has also heard directly from legal representatives of several people who were detained at this time, including some of those referred to above. Moreover, the Mission addressed questions to the Government of Israel with regard to the number of persons from Gaza detained by Israel during the military operations and the duration of their detention, including how many remain in custody. The Mission asked how many persons detained in Gaza were charged with being "unlawful combatants" and on what basis, how many were subjected to trial and what due process guarantees were afforded to them. No reply was received.

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[545] PCATI Affidavit submitted to the Mission. Addameer, Prisoners Support and Human Rights Association affidavit of AD/06.

[546] The complaint was submitted by the Public Committee against Torture in Israel (PCATI), the Association for Civil Rights in Israel (ACRI), HaMoked – Centre for the Defence of the Individual, Physicians for Human Rights – Israel (PHR-Israel), B'Tselem, Adalah and Yesh Din. See http://www.btselem.org/english/press_releases/20090128.asp

[547] Figures supplied to the Mission by PCHR, Adalah and PCATI.

[548] Correspondence with Addameer, Prisoners Support and Human Rights Association, 25 June 2009.

A. Al-Atatra sandpits

1112. Al-Atatra is located 10 kilometres north of Gaza City, west of Beit Lahia and three to four kilometres south of the Green Line. The neighbourhood is largely agricultural with orange and lemon orchards. On the morning of 5 January, it suffered heavy aerial bombardment, which was followed by a ground incursion by Israeli troops. The Mission met six people, members of the same extended family[549] and residents of al-Atatra, three of whom were direct witnesses and victims of the events that occurred in the aftermath of the ground incursion.[550] Their testimonies are supported by those of three others, also residents of al-Atatra, submitted to the Mission by an NGO.[551]

1113. On the morning of 5 January, shortly after the ground operations began, an estimated 40 Israeli soldiers broke into several homes, including that of AD/01, who described to the Mission how 65 persons, several of whom were holding white flags, were made to assemble in the street. The soldiers separated the men from the women. The men were made to line up against a wall and strip to their underwear. AD/01 indicated that any attempt to resist the soldiers was met with physical force, resulting in injuries.

1114. Approximately 20 minutes later, they were taken into a house owned by Mr. Khalil Misbah Attar, where they were detained for a day, the men still separated from the women. The house had been struck by a number of missiles that morning and was badly damaged. Witnesses indicated to the Mission that the house was at that time being used by the Israeli armed forces as a military base and sniper position.[552]

1115. At around 10 p.m., all of the men were handcuffed behind their backs with plastic restraints and blindfolded. The men, 11 women and at least seven children below the age of 14 were taken on foot to al-Kaklouk located south of the American School, one to two kilometres away. Many of the men remained in their underwear, exposed to the harsh winter weather.[553] Al-Kaklouk is very close to Israeli military artillery and tank positions, and while the detainees were held here at least one tank was engaged in frequent firing.

1116. AD/01 told the Mission that, on arrival at al-Kaklouk, everyone was asked to clamber down into trenches, which had been dug to create a pit surrounded by a wall of sand, about three metres high. There were three such pits, each of which was surrounded by barbed wire. They were estimated to cover about 7,000 square metres ("six or seven *donums*") each. AD/01 described how they were assembled in long single files, rather than massed together, and held in these pits, in the open air and exposed to cold temperatures for three days (till 8 January). Each pit accommodated approximately 20 people. They were forced to sit in stress positions, on their knees and leaning forward keeping their heads down. They were monitored by soldiers and were not allowed to communicate with each other. They had no access to food or water on the first day of their internment, and were given a sip of water and an olive each to eat on the second and third days of their detention (6 and 7 January). They had limited access to toilet facilities. The men had to wait for two to three hours after asking before they were allowed to leave the pits to relieve themselves and sometimes were able to remove their blindfolds for the purpose. A few of them were told to relieve themselves inside the pit, behind a small mount of sand. They stated that it was culturally too difficult for the women to seek permission to relieve themselves and they did not ask.

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[549] For security reasons the witnesses from the family are referred to by coded reference here.

[550] Testimony to the Mission by AD/01 (plus three others), 30 June 2009.

[551] Affidavit of RR, RS and RT, residents of al-Atatra, submitted to the Mission by Adv. Majd Bader.

Public Committee Against Torture in Israel who testified at the public hearings in Geneva.

[552] The use of Mr. Khalil Misbah Attar's house as a detention place is corroborated in the testimony of Samir Ali Muhammad Attar collected in an affidavit by Advocate Mahar Talhamy on behalf of PCATI, available at: http://www.stoptorture.org.il/files/28109_eng.pdf.

[553] According to the BBC weather services, temperatures in the Gaza Strip in December and January, on average, vary from maximum 17° to minimum 7° Celsius.

1117. AD/01 states that some tanks were inside the pit with at least one tank positioned at the eastern end.[554] While the people were held there, the tank facing inland each day sporadically fired on the houses along the road opposite the site.

1118. AD/01B and AD/01C recounted that on 8 January, the women and children were released and told to go to Jabaliyah. The men were transferred to military barracks near the northern border, identified as the Izokim Barracks. At the Izokim barracks, the men were detained in pits similar to but smaller than those in al-Kaklouk. They continued to be exposed to the cold temperature, rain and the constant sound of tank movement overhead. The witnesses have described to the Mission the experience of continued and prolonged exposure to the sound of this tank movement as disorienting and creating feelings of futility, isolation, helplessness and abject terror.

1119. The men were held handcuffed and in their underwear in the Izokim barracks overnight. They were questioned intermittently, mostly on details and locations of Qassam rockets, the tunnels and the whereabouts of Hamas parliamentarians. According to statements made to the Mission, they were beaten during the interrogation and threatened with death and being run over by tanks. The Mission notes that the nature and types of questions asked remained the same throughout the interrogations in various detention facilities.

1120. On 9 January, the men were taken to a prison in Israel, indentified by one witness as the Negev prison, where they remained until 12 January. They were detained in one section of the prison, alternating between being held in isolation and in shared cells, and were subjected to harsh interrogation, often by two people dressed in civilian clothes. Interrogation focused on the identification of Hamas tunnels and arms as well as the whereabouts of Gilad Shalit.

1121. AD/01B and AD/01C recounted that they were shackled to a chair with plastic strips and interrogated several times, with AD/01B stating that he was made to strip naked during an interrogation. He was kept in solitary confinement where a soldier would come intermittently during the day, and slam the cell door open and shut, exposing him to extremely cold temperatures. AD/01C stated that during the first interrogation he was verbally threatened and in the subsequent two he was blindfolded and beaten. He was made to stand up and face the wall, following which his face was smashed against the wall several times before he was severely beaten (kicked and punched) on his back and buttocks.

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[554] This is corroborated in the statement by RR to PCATI.

1122. Requests for clothing were denied. During the interrogation the detainees were informed that they were "illegal combatants" and that they had no protection under the Geneva Conventions. They had limited access to food, water and sanitation. Their morning meal was a bottle-cap-sized piece of bread with a drop of marmalade. The evening meal, if provided, consisted of rotting sardines and cheese on mouldy bread.

1123. AD/01C described the experience of being detained, stripped and shackled as one of abandonment, desperation, suffocation and isolation. He continues to experience discomfort where he was beaten and is unable to sit and sleep comfortably.

1124. AD/01C stated that while in Negev prison an additional group arrived. They were kept separately in the second section. The exact number of detainees in the second group is unknown, although AD/01C indicated to the Mission that the second group was smaller.

1125. On 12 January, nine people including the witnesses were blindfolded, handcuffed and transported to the Erez border. AD/01 described to the Mission how they were subjected to harsh interrogation at Erez and made to strip completely. Several hours later they were told to run into Gaza, to look straight ahead and not to look back.

1126. AD/01 states that all 65 detainees from the original group taken from al-Atatra to Israel were eventually released. Some members of his family were detained afterwards, but not in the original group of 65. At the time of writing, three of these remain incarcerated in various detention facilities of the Israel Prison Service. An unknown number remain in prison facing charges of being illegal combatants and members of al-Qassam Brigades. The first hearing was scheduled to be held in August in Israel (exact date not known).

B. Detention and abuse of AD/02

1127. AD/02 was interviewed by the Mission on 1 July 2009. He is a resident of Beit Lahia and a businessman. He was detained on 4 January 2009 for around 85 days. In that period he was held in Beersheba and Negev prisons, after being detained in locations identified as military posts. He was mentally and physically abused. He appeared before what appeared to be a criminal court, but the precise nature of the proceedings and their results were never made clear to him. He was released without explanation and returned to the Erez border and told to re-enter Gaza.

1128. By 3 January AD/02 and his extended family, numbering over 200, had gathered together in Beit Lahia as a result of the attacks that were taking place in the area. At around 4 a.m. on 4 January Israeli troops entered the area shooting. They ordered everyone out of the house and separated the men from the women and children. They selected 15 of the men, without asking for names. The women and children were ordered to go south. AD/02 recounted that the 15 men, including him, were separated from the other men and were blindfolded and handcuffed with plastic strips.[555] They were taken on foot to an open space half a kilometre away. An hour later, they were taken to a house where they were joined by an estimated 54 or 55 people, who apparently also wore blindfolds.

1129. AD/02 described how they were interrogated in a separate room, individually and at times in groups of two or three. He stated that some of the men, though not him, were beaten during the interrogation and were made to clamber down into trenches or pits, dug in the ground outside the house, big enough to accommodate one person. They were kept in the pits for several hours at a time, handcuffed and blindfolded, with no access to toilets.

1130. Later that night, 15 people – four women and at least 11 children – were brought to the house. They were detained overnight in the corridor outside the room where the men were detained. The next morning, on 4 January, the men, women and children were taken out of the house to an open space. The men remained blindfolded and handcuffed. AD/02 stated that the open space was a military post with many tanks and soldiers. They were all told to sit in the middle of the empty space. A fence of barbed wire was then erected around them. They sat within the barbed enclosure all day and all night in close proximity to the movement and sound of military tanks.

1131. AD/02 stated that 18 to 20 other men were held overnight in an open truck, exposed to the cold and rain. AD/02 knew this from talking to some of the men the following morning.[556]

1132. On 5 January, 18 to 20 men, not including AD/02, were taken from the military post to an unknown location.[557] AD/02 and 35 others were taken to an area described by him as located north of Gaza City and in Israel. They remained handcuffed and blindfolded for an hour and a half. Then a roll-call was taken, their blindfolds removed and they were interrogated by a person who identified himself as an intelligence officer. Shortly afterwards, AD/02 and a few others (exact number not known) were interviewed by a group of people identifying themselves as part of a television crew. AD/02 does not know the name and/or details of the television channel. They were then led to an open space, where they stayed all evening exposed to the rain and cold. Later that night (5–6 January) they were blindfolded and shackled with chains and taken to a location which AD/02 subsequently learned was the Beersheba prison facility. A few hours later, at dawn, their blindfolds and handcuffs were removed.

1133. AD/02 recounted that he was in extreme pain as the handcuffs were very tight, adding to the pain caused by pre-existing injuries to his hands and wrist. Earlier in his life, he had suffered serious burns and the scarring on his hands and arms is evident. There is continued nerve damage to the skin tissue which causes significant pain in cold weather. His gloves were taken away by soldiers during an interrogation, exposing his hands to the extreme cold. His requests for medical assistance were ignored several times before his arrival in Beersheba, where he was given access to a doctor. He was, however, given only a non-medicated lotion.

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[555] Jerusalem Centre for Public Affairs submission, page 48; see also testimony 21 in *Soldiers' Testimonies…*, which supports AD/01's statement: "we go in, call out to the owner to open, gather all the males, shackled them, gather the family in one room and begin to search", p. 50.

[556] AD/02's statement is corroborated in a letter sent by various NGOs (ACRI, PCATI, HaMoked, PHR, B'Tselem, Yesh Din and Adalah) to the Military Advocate General on 8 January 2009, available at: http://www.stoptorture.org.il/files/28109_eng.pdf.

[557] AD/02 indicated that it was later learned that the men had been taken to Ashkelon prison before being brought to the Beersheba Prison, where they were grouped with the others, including AD/02.

1134. AD/02 stated that he was detained in Beersheba for approximately a week. He was intermittently kept in isolation and then in a courtyard with several other detainees. In one instance, he was blindfolded, handcuffed and shackled, and interrogated for approximately two hours by three people. He was verbally abused and beaten during the interrogation, his hair was pulled and he was kicked with one of the interrogators attempting to push his boots through the loop of the handcuffs tied around his wrists.

1135. On or around 13 January, pursuant to an interrogation by a person dressed in civilian clothes, AD/02 was blindfolded and handcuffed and taken to the Negev prison. He remained there until the end of March. During this time he was transferred at least 10 times from one cell to another.

1136. On arrival his handcuffs were removed and he was taken to a ward, which consisted of small one-man cells with iron doors and no windows. The cells each contained an iron bench. Two hours later, he was blindfolded and taken to an interrogation room, where he was stripped and made to stand alone, naked, for almost an hour before his clothes were returned and he was handcuffed and shackled. He was taken by four people to another room, where he was beaten with the butt of a rifle while also being kicked and punched several times. The beating lasted for about 30 minutes. He was then left alone in the room for about 2 hours. He was then taken to a large communal space referred by the soldiers as the "tents." There were seven or eight such spaces or tents spread across the prison.

1137. AD/02 said that he was unable to stand owing to the severe injuries sustained during the beatings and had to be carried to the tents. He was taken to a doctor, given some medicines and allowed to take a shower. AD/02 stated that he stayed in the tent area for about a week before being transferred to a cell occupied by four people. The cell had an iron bed and a bunk bed. Two people including AD/02 slept on the floor. The cell was dark and filthy. There was no clean water and no toilet. During the entire week the men had to relieve themselves in the cell, which was never cleaned.

1138. AD/02 remained in the cell for about one week. At some time during this period he was taken, blindfolded, handcuffed and shackled, by bus to what appeared to be a court. On arrival, his handcuffs and blindfold were removed. He remained shackled when he was taken inside the courtroom. The courtroom had a standard layout with the judge seated behind a table in the centre of the room. The prosecution was on one side and the defence on the other. They were all dressed in civilian clothes. Once inside the courtroom, AD/02 was made to sign a consent form, accepting the lawyer reportedly appointed to defend him. Although the lawyer identified himself as belonging to a human rights organization, he gave no name. As the proceedings began, the judge addressed AD/02 and read out the charge against him. The judge announced that he was being charged with being an illegal combatant but did not explain specific charges. AD/02 was asked no questions. When the defence lawyer asked for the charge to be elaborated, the judge replied that the charges were part of a secret dossier and could not be elaborated upon or revealed. The proceeding lasted about 30 minutes and AD/02 was taken back to Negev.

1139. A week later, around or on 28 January, AD/02 was transferred to another section of the prison, where roll-calls and strip searches were carried out regularly. Some 8 to 10 days later, around 7 February, he and 14 others, were moved to a larger ward with prisoners from the West Bank. The ICRC was given access to them.

1140. On 8 February, AD/02 was transferred, twice, to another section of the prison and shortly afterwards to the cell where he had first been detained on arrival at Negev. On 9 February, at around noon, he and several others were transferred, for the ninth time, to another section of the prison occupied by a large number of prisoners, including those from the West Bank. AD/02 indicated that several of them were parliamentarians. He remained in this section for approximately 20 days. During this time he three times met a person who identified himself as a lawyer. He was informed of the charges against him, which included membership and involvement with the resistance.

1141. On 2 March, he was transferred with 10 others to yet another section of the prison. They were put in two rooms, five in each room. The rooms had graffiti on the wall that read *illegal combatants* in English and in Hebrew. They had limited access to toilets and were given uncooked food to eat.

1142. Around 29–30 March, AD/02 was finally released. He and his brother, a cousin and two other residents of Izbat Abd Rabbo were blindfolded and handcuffed and taken to the Erez border, where they were interrogated for approximately four hours. They were then told to cross the border and not look back. They were given no explanation about either their detention or their release.

C. AD/03

1143. AD/03 is a resident of al-Salam neighbourhood, east of Jabaliyah and close to the eastern border with Israel. His arrest and detention were preceded by aerial attacks and a ground invasion in his neighbourhood. His house was struck several times, over a period of five days, by projectiles fired from F-16 aircraft. The attacks continued throughout the night when most people were asleep.[558] As a result of the continued attacks, he sought refuge in a relative's house nearby.

1144. AD/03 stated that, although the area could be considered as a frontline where armed groups had been present, the neighbourhood could not reasonably have been perceived as a military threat by the time the Israeli armed forces arrived on the ground. There was no resistance going on in the neighbourhood when it was targeted. If the intent of the attacks was to destroy alleged command centres, positions or weapons caches of Hamas, he felt that those positions would have been destroyed in the first few attacks on the neighbourhood given the intensity of the shelling.

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[558] On the afternoon of 3 January, AD/03's house was struck twice by projectiles, within two hours, causing significant damage. He and his family moved to a relative's house nearby, where they stayed overnight. On 4 January in the evening, when AD/03 had returned to his own home, it was struck for the third time and part of the roof collapsed. AD/03 sustained minor injuries; his mother and his wife sustained more serious injuries. Later that night, at around 9.40 p.m., the house was hit by a fourth rocket, which was followed by another attack 20 minutes later that completely destroyed the ground floor facade injuring AD/03's father's second wife. Another shell (the sixth attack) was fired shortly afterwards. AD/03 and his family relocated for the second time to his cousin's house, where they remained for four nights, until 7 January. On the morning of 8 January, aerial bombardment intensified to the extent that three explosions/shells were reportedly heard every minute.

1145. On 8 January, at around 11.30 a.m., the house where AD/03 was seeking refuge was struck by a missile so he decided to return to his own house. He described how Israeli soldiers fired at them, including women and children carrying white flags, when they tried to leave his cousin's house. His father's wife sustained a bullet injury to her leg. Thirty minutes later, around noon, the Israeli armed forces ordered all residents to evacuate their homes and come out in the street. The men were separated from the women and children, and told to line up against a wall, lift their shirts and strip to their underwear. They remained stripped and lined up against the wall for approximately 15 minutes. The men, women and children were then told to walk down the street.

1146. AD/03 recounted that the street was blocked with large piles of heavy rubble and debris of bulldozed buildings, which provided a difficult obstacle for several people, including children and elderly people. They walked 200-250 metres before arriving at a house. Two hours later the women and children were told to go to Jabaliyah. Shortly afterwards, AD/03, his brother, cousin and an unknown man were taken to another room, where they were forced to lie on the ground. They were then blindfolded and their hands were tied behind their backs with plastic strips. They were interrogated individually for several hours. Later that evening, they were made to walk about 100 metres eastward to another house. They were detained overnight in a room, together with three others, who identified themselves as residents of Abd Rabbo. They had no access to food, water or toilets. The next morning, on 9 January, their blindfolds were removed and all seven were interrogated, individually, by one soldier.

1147. AD/03 stated that the house was being used as a military base and sniper position. On the second day of detention the Israeli soldiers began to use some detainees as human shields. By then the detainees had been without food and sleep for a day. They had been subjected to what AD/03 described as psychological torture. There were constant death threats and insults. To carry out house searches as human shields the Israeli soldiers took off AD/03's blindfold but he remained handcuffed. He was forced to walk in front of the soldiers and told that, if he saw someone in the house but failed to tell them, he would be killed. He was instructed to search each room in each house cupboard by cupboard. After one house was completed he was taken to another house with a gun pressed against his head and told to carry out the same procedure there. He was punched, slapped and insulted throughout the process.

1148. AD/03 indicated that he was forced to do this twice while the group was being held in this house for eight days. Others were also required to do the same thing. On the first occasion he was forced to carry out searches in three houses and on the second in four. AD/03 estimates that these searches took between one hour and one hour and a half. At no point did he come across any explosive devices or armed group members.

1149. AD/03 stated that, at the end of every search, the houses were vandalized by the Israeli soldiers, who broke doors, windows, kitchenware and furniture, for instance.[559]

1150. At the end of the day he was taken back to the house, where he and six others continued to be detained for 8 days, until 16 January. They had limited access to food and water and were often denied access to toilets. They were told that their ordeal would continue indefinitely. One soldier reportedly told them that the soldiers were "following instructions issued by the chain of command."

1151. For the first time the detainees were asked for proof of identity. AD/03 said that their identification documents were thoroughly inspected. Had they revealed anything in relation to militant activities, he believed they would have been killed.

1152. On 16 January they were handcuffed, with plastic strips tied very tightly around their wrists, made to stand in a single file, blindfolded and told to hold on to the shirt of the person standing in front of them. They were made to walk towards a military tank positioned very close to the house where they had been detained and told to sit on top of each other inside the tank. The tank drove on a bumpy track and over big boulders causing them to frequently slam against the sides of the tank. About three hours later it stopped in an unknown location. On arrival, they were asked to clamber down into holes or pits about three to four metres deep. AD/03 stated that they were in a military post, as they heard the voices of several soldiers laughing and joking noisily. They remained blindfolded and handcuffed and exposed to the continued sound of tank movement overhead. They remained in the pit for about one hour and were then made to sit inside a tank that moved in circles.

1153. Shortly afterwards, their handcuffs were removed and they were shackled with chains inside a bus. They were accompanied by soldiers who spoke Hebrew. On arrival, they were searched and then interrogated for eight hours before being taken to the military barracks in Beersheba. Then they were made to line against the wall before being asked to strip naked. They were made to stand, blindfolded, naked and exposed to the cold winds, for about three or four hours.

1154. On 19 January, eight people, including AD/03, his brother and one other man from the group of seven who were taken to Beersheba on 16 January, were shackled inside the bus, made to bend forward and keep their heads down, between their knees, and were taken to Negev prison, a journey that lasted approximately four hours. During this journey they were continuously beaten, kicked and punched by four or five soldiers on board. According to AD/03, the detainees sustained serious injuries and were bleeding, two bleeding more profusely than the others. Two detainees reportedly even fainted. He stated that soldiers on board made constant reference to shackling practices in the Russian Federation, leading AD/03 to believe that the soldiers were from there.

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[559] The account of a soldier interviewed by Breaking the Silence and the account in the submission of the Jerusalem Centre for Public Affairs clarify that soldiers would vandalize houses after searches. Jerusalem Center for Public Affairs submission, p. 78. "The family was not in there, they had run away. He [one of the soldiers] took out notebooks and textbooks and ripped them. One guy smashes cupboards for kicks, out of boredom. […]" *Soldiers' Testimonies…*, testimony 35, p. 80.

1155. On arrival at Negev, they were severely beaten by the prison security for approximately one and a half hours before being put into cells and told that they were caught during battle and were illegal combatants. Later that night, 10 more people joined the group of detainees.

1156. AD/03 described how on the second day of their incarceration, 20 January, the detainees (at this point 18 in number) were told that they would be interrogated in accordance with their alleged political affiliations. Several of them pointed out that they had none. They were grouped apart. AD/03 said that they talked among themselves and he found out that nine of them were livestock farmers and three or four were merchants and traders.

1157. AD/03 described how the detainees were divided into two groups of nine each and put in a section of the prison referred to as the *mardaban*, which was divided into two wards containing 10 iron beds each and guarded by Israeli Arab soldiers. They remained incarcerated for eight days, until 27 January, with limited access to food, water, toilets and physical exercise.

1158. On 24 January, AD/03 was given access to a lawyer, affiliated with Addameer, Prisoners Support and Human Rights Association,[560] for the first and only time. The Mission interviewed him[561] and he confirmed that he had visited AD/03 and his brother on 25 January 2009. The lawyer's evidence provided corroboration of the detention of AD/03 and his brother (who was also assisted by the lawyer), and the conditions under which he was subjected to criminal proceedings in Israel. The lawyer was informed by the Israeli authorities that AD/03 was detained under the illegal combatant law but he was not given the dossier to review. His brother was never formally charged.

1159. On 25 January, the detainees were told that they would be taken to Beersheba for their trial. On 26 January, all 18 detainees were shackled with iron chains to iron benches in a bus, handcuffed with iron handcuffs and taken to Beersheba. They were not blindfolded. The journey lasted five hours during which the bus drove on bumpy roads causing the detainees to slam against the sides of the bus. They were detained in Beersheba overnight in overcrowded cells together with people convicted of serious offences, according to AD/03. They were mostly Israeli Jews.

1160. The following morning, on 27 January, they were taken back to the Negev prison in shackles and handcuffs. They were given no information regarding the scheduled hearing. The outcome of the proceedings was not clear to AD/03 at the time, as he believed he had been "acquitted" only when they were returned to the Negev prison.

1161. The lawyer from Addameer was present in the court. According to him, the prosecutor made the decision not to proceed with the case rather than the detainees being acquitted. The lawyer confirms that they were held in Ktziot prison in the Negev Desert and released on 27 January.

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[560] The Mission has heard directly from AD/03's legal representative, who stated that he received a copy of his file, but not the secret file, from the Prosecutor's Office on 21 January 2009. AD/03 was arrested on suspicion of being an illegal combatant.

[561] The lawyer had been alerted to the cases by Al Mezan, a human rights organization in Gaza.

1162. AD/03 said they were then taken back to Beersheba and later to the Erez border, where they were released. They were told to run into Gaza and not look back.

1163. AD/03 indicated that two others, detained with him, were released a month later. Two others continue to be detained in the Ktziot prison and are reportedly awaiting trial. The status and whereabouts of 11 others are not known.

D. Factual findings

1164. The Mission found the witnesses credible and reliable taking into account their demeanour and the consistency of their statements. At least one of them was still suffering considerable anguish because of the treatment he had endured at the hands of the Israeli soldiers and other officials. The Mission notes that there are several common features to these incidents that disclose a pattern of behaviour on the part of the Israeli soldiers, indicating that the treatment meted out to the persons deposing before the Mission were not isolated incidents. The facts available to the Mission indicate that:

- All three locations were near the border with Israel;
- Before the arrival of ground troops, all three had been under aerial or ground attack. The soldiers on the ground were in complete control of the area at the time of their encounter with the civilians;
- There was no combat activity by the persons reporting, nor any likelihood of such activity being under way in the area or nearby at the time that the soldiers started the operation against civilians in the three locations. None of the civilians was armed or posed any apparent threat to the soldiers. In two of the incidents they were holding white flags as a sign of their non-combatant status;
- It is clear in two of the incidents that none of those detained had been asked for their names by the soldiers for several days. This establishes that there was no definite suspicion against them that they were combatants or otherwise engaged in hostile activities;
- In all cases a number of persons were herded together and detained in open spaces for several hours at a time and exposed to extreme weather conditions;
- The soldiers deliberately subjected civilians, including women and children, to cruel, inhuman and degrading treatment throughout their ordeal in order to terrorize, intimidate and humiliate them. The men were made to strip, sometimes naked, at different stages of their detention. All the men were handcuffed in a most painful manner and blindfolded, increasing their sense of fear and helplessness;
- Men, women and children were held close to artillery and tank positions, where constant shelling and firing was taking place, thus not only exposing them to danger, but increasing their fear and terror. This was deliberate, as is apparent from the fact that the sandpits to which they were taken were specially prepared and surrounded by barbed wire;

- During their detention in the Gaza Strip, whether in the open or in houses, the detainees were subjected to beatings and other physical abuse that amounts to torture. This continued systematically throughout their detention;
- Civilians were used as human shields by the Israeli armed forces on more than one occasion in one of the three incidents. Taking account of other incidents in which the Mission has found this to have happened, it would not be difficult to conclude that this was a practice repeatedly adopted by the Israeli armed forces during the military operation in Gaza;
- Many civilians were transferred across the border to Israel and detained in open spaces as well as in prisons;
- The methods of interrogation amounted not only to torture in some of the cases, but also to physical and moral coercion of civilians to obtain information;
- These persons were subjected to torture, maltreatment and foul conditions in the prisons. They were deprived of food and water for several hours at a time and any food they did receive was inadequate and inedible;
- While in detention in Israel they were denied due process.

E. Legal findings

1165. The Mission considers the following legal provisions relevant to its consideration of the matters presented above:[562]

Article 4 of the Fourth Geneva Convention

> Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or occupying Power of which they are not nationals.
>
> Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.
>
> The provisions of Part II are, however, wider in application, as defined in article 13.
>
> Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12August 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12August 1949, or by the Geneva

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[562] The Mission does not repeat here the provisions already cited elsewhere, such as article 57 of Additional Protocol I or common article 3.

Convention relative to the Treatment of Prisoners of War of 12August 1949, shall not be considered as protected persons within the meaning of the present Convention.

Article 5 of the Fourth Geneva Convention

Where, in the territory of a party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or occupying Power, as the case may be.

Article 27 of the Fourth Geneva Convention

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

However, the parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Article 76 of the Fourth Geneva Convention

Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

> They shall receive the medical attention required by their state of health. They shall also have the right to receive any spiritual assistance which they may require.
>
> Women shall be confined in separate quarters and shall be under the direct supervision of women.
>
> Proper regard shall be paid to the special treatment due to minors.
>
> Protected persons who are detained shall have the right to be visited by delegates of the protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of article 143.
>
> Such persons shall have the right to receive at least one relief parcel monthly.

1166. Relevant parts of article 75 of Additional Protocol I, which reflect customary international law, provide:

> 1. In so far as they are affected by a situation referred to in article 1 of this Protocol, persons who are in the power of a party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.
>
> 2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:
>
> (a) Violence to the life, health, or physical or mental well-being of persons, in particular:
>
> […]
>
> (ii) torture of all kinds, whether physical or mental;
>
> (iii) corporal punishment; and
>
> […]
>
> (b) Outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
>
> (c) The taking of hostages;
>
> (d) Collective punishments; and
>
> (e) Threats to commit any of the foregoing acts.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

(a) The procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) No one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) No one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) Anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) Anyone charged with an offence shall have the right to be tried in his presence;

(f) No one shall be compelled to testify against himself or to confess guilt;

(g) Anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(h) No one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;

(i) Anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and

(j) a convicted person shall be advised on conviction of his judicial and other remedies and of the time limits within which they may be exercised.

5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned,

> they shall, whenever possible, be held in the same place and accommodated as family units.
>
> 6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this article until their final release, repatriation or re-establishment, even after the end of the armed conflict.
>
> 7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:
>
> (a) Persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and
>
> (b) Any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.
>
> 8. No provision of this article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.

1167. From the facts available to it, and in the absence of any information refuting the allegations that the incidents described above took place, the Mission finds that there have been a number of violations of international humanitarian law and human rights law.

1168. All of the persons held were civilians and protected persons under article 4 of the Fourth Geneva Convention. The Mission does not accept the proposition that the men were detained as or considered to be unlawful combatants and therefore beyond the protection of the Fourth Geneva Convention. An individual loses the status of protected person only if that person is "definitely suspected of or engaged in activities hostile to the security of the State" (art. 5). The Mission has not heard any information suggesting this to be the case. Even if a person is no longer entitled to the status of protected person, article 5 provides that such persons must "be treated with humanity" and "shall not be deprived of the rights of fair and regular trial." Furthermore, under Additional Protocol I, article 75, they shall enjoy "as a minimum" the protections provided by that article.

1169. The Mission has considered to what extent the actions of the Israeli armed forces might legitimately be considered as some kind of internment in the light of the resistance from armed groups in the area generally, although not in the context of the specific detentions. These people from Gaza were detained in prisons inside Israel (Beersheba, Ashkelon and Negev prisons), contrary to the Fourth Geneva Convention, which stipulates in article 76 that protected persons should be detained inside the occupied territory and not transferred out of it unless there is a pressing security need.[563] It also makes clear that internment is the most severe measure that a detaining authority or occupying Power may take with respect to protected persons against whom no criminal proceedings have been initiated. Internment is a preventive administrative measure and cannot be considered a penal sanction.[564] Recourse to the measure may be had only if the security of the State makes it "absolutely necessary" (art. 42) or "for imperative reasons of security" (art. 78).

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[563] ICRC also specifies that, in occupied territories, civilians can be interned, or placed in assigned residence, only within the frontiers of the occupied country itself. See ICRC Commentary on article 78 of the Fourth Geneva Convention.

1170. The Mission does not consider that the information it has received supports defining the treatment described above as internment.

1171. The rounding-up of large groups of civilians and their prolonged detention under the circumstances described above constitute a collective penalty on those persons in violation of article 33 of the Fourth Geneva Convention and article 50 of the Hague Regulations. Such treatment amounts to measures of intimidation and terrorism, prohibited under article 33 and a grave breach of the Convention that constitutes a war crime.

1172. By holding the detainees in sandpits without privacy, the Israeli soldiers failed to ensure respect for their persons or to treat them humanely as required by article 27 of the Fourth Geneva Convention. The information before the Mission suggests that this treatment could not be justified as necessary "measures of control and security." This treatment also constituted outrages on personal dignity, humiliating and degrading treatment contrary to the Geneva Conventions, common article 3, and Additional Protocol I, article 75 (2) (b). The abuse, which required a considerable degree of planning and control, was sufficiently severe to constitute inhuman treatment within the meaning of article 147 of the Fourth Geneva Convention and thus a grave breach of the said Convention that would constitute a war crime.

1173. "Women shall be the object of special respect", in accordance with article 76 of Additional Protocol I. The Mission finds, on the information before it, that the treatment of the women in the sandpits, where they endured especially distressing circumstances, was contrary to this provision and would also constitute a war crime.

1174. The Mission has received information relating to the particular treatment received by some witnesses, such as shackling, severe beatings during detention and interrogation, being held in foul conditions or solitary confinement, which added to their already profound sense of degradation. Such treatment violates article 31 of the Fourth Geneva Convention, which prohibits physical or moral coercion against protected persons, "in particular to gain information from them". This would also constitute a war crime.

1175. Furthermore, on the basis of this information, the Mission considers that the severe beatings, constant humiliating and degrading treatment and detention in foul conditions allegedly suffered by individuals in the Gaza Strip under the control of the Israelis and in detention in Israel, would constitute torture, and a grave breach under article 147 of the Fourth Geneva Convention and a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Such violations also constitute war crimes.

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[564] ICRC Commentary on the Fourth Geneva Convention.

1176. From the facts ascertained by it, the Mission believes that there has also been a violation of articles 7 and 10 of the International Covenant on Civil and Political Rights, as well as of article 14 ICCPR with regard to the right to be brought before a judge at the earliest opportunity, the right to be informed of the charges against one, the right to consult with legal counsel and the right to be provided with a meaningful opportunity to defend oneself.

XVI. OBJECTIVES AND STRATEGY OF ISRAEL'S MILITARY OPERATIONS IN GAZA

1177. This chapter addresses the objectives and the strategy underlying the Israeli military operations in Gaza.

A. Planning

1178. The question of whether incidents involving the Israeli armed forces that occurred between 27 December 2008 and 18 January 2009 are likely to be the result of error, the activities of rogue elements or a deliberate policy or planning depends on a number of factors, including the degree and level of planning involved, the degree of discretion field commanders have in operations, the technical sophistication and specification of weaponry, and the degree of control commanders have over their subordinates.

1179. The Government of Israel has refused to cooperate with the Mission. The Mission has therefore been unable to interview high-level members of the Israeli armed forces. It has, nevertheless, reviewed a significant amount of commentary and conducted a number of interviews on planning and discipline, including with persons who have been connected with the planning of Israeli military operations in the recent past. The Mission has also analysed the views expressed by Israeli officials in official statements, official activities and articles, and considered comments by former senior soldiers and politicians.

1. The context

1180. Before considering the issue of planning there is an important issue that has to be borne in mind about the context of Israeli operations in Gaza. The land mass of Gaza covers 360 square kilometres of land. Israel had a physical presence on the ground for almost 40 years with a significant military force until 2005. Israel's extensive and intimate knowledge of the realities of Gaza present a considerable advantage in terms of planning military operations. The Mission has seen grid maps in possession of the Israeli armed forces, for example, that show the identification by number of blocks of houses throughout Gaza City.

1181. In addition to such detailed background knowledge, it is also clear that the Israeli armed forces were able to access the telephone networks to contact a significant number of users in the course of their operations.[565]

1182. Since the departure of its ground forces from Gaza in 2005, Israel has maintained almost total control over land access and total control over air and sea access.[566] This has also included the ability to maintain a monitoring capacity in Gaza, by a variety of surveillance and electronic means, including UAVs. In short, Israel's intelligence gathering capacity in Gaza since its ground forces withdrew has remained extremely effective.

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[565] See "The operation in Gaza…", paras. 8, 24, 138, 264, 350, 354, 375, 389 and 447.

2. Legal input and training of soldiers on legal standards

1183. The Israeli Government has set out the legal training and supervision relevant to the planning, execution and investigation of military operations.[567] The Mission also met Col. (Ret.) Daniel Reisner, who was the head of the International Legal Department of the Military Advocate General's Office of the Israeli Defense Forces from 1995 until 2004. In an interview with the Mission he explained how the principles and contents of international humanitarian law were instilled into officers. He explained the four-tiered training system, reflecting elements similar to those presented by the Government, which seeks to ensure knowledge of the relevant legal obligations for compliance in the field. Firstly, during training all soldiers and officers receive basic courses on relevant legal matters. The more senior the ranks, the more training is required "so that it becomes ingrained". Secondly, before a significant or new operation, legal advice will be given. Col. Reisner indicated that he understood from talking with colleagues still in active service that detailed consultations had taken place with legal advisers in the planning of the December-January military operations. He was not in a position to say what that advice had been. Thirdly, there would be real-time legal support to commanders and decision makers at headquarters, command and division levels (but not at regiment levels or below). The fourth stage is that of investigation and prosecution wherever necessary.

1184. The same framework explained by Col. Reisner appears to be repeated in similar detail in a presentation of the Office of the Legal Adviser to the Ministry of Foreign Affairs.[568]

3. The means at the disposal of the Israeli armed forces

1185. The Israeli armed forces are, in technological terms, among the most advanced in the world.[569] Not only do they possess the most advanced hardware in many respects, they are also a market leader in the production of some of the most advanced pieces of technology available, including UAVs.[570] They have a very significant capacity for precision strikes by a variety of methods, including aerial and ground launches. Moreover, some new targeting systems may have been employed in Gaza.[571]

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[566] See chap. IV.

[567] "The operation in Gaza…", paras. 212-221.

[568] http://www.mfa.gov.il/NR/rdonlyres/8DC5105D-A2A1-4709-9874-F42F1D1DA44B/0/TaubGazaLegalAspects270509.pps.

[569] For a detailed breakdown of Israeli capacity, see http://www.inss.org.il/upload/(FILE)1245235226.pdf.

[570] Ibid., pp. 8-9.

[571] According to the Israeli armed forces, the system, controlled by a computer and composed of 120 ml mortars, was developed for use by ground forces. "The Keshet weapons system is an autonomous mortar with the ability to aim and navigate independently. It fires at a fast speed and has the capacity to fire the first mortar accurately within a minute". See http://dover.idf.il/IDF/English/News/today/2008n/04/1401.htm.

1186. Taking into account all of the foregoing factors, the Mission, therefore, concludes that Israel had the means necessary to plan the December-January military operations in detail. Given both the means at Israel's disposal and the apparent degree of training, including training in international humanitarian law, and legal advice received, the Mission considers it highly unlikely that actions were taken, at least in the aerial phase of the operations, that had not been the subject of planning and deliberation.[572] In relation to the land-air phase, ground commanders would have had some discretion to decide on the specific tactics used to attack or respond to attacks. The same degree of planning and premeditation would therefore not be present. However, the Mission deduces from a review of many elements, including some soldiers' statements at seminars in Tel Aviv and to Breaking the Silence, that what occurred on the ground reflected guidance that had been provided to soldiers in training and briefing exercises.[573]

1187. The Mission notes that it has found only one example where the Israeli authorities have acknowledged that an error had occurred. This was in relation to the deaths of 22 members of the al-Daya family in Zeytoun. The Government of Israel explained that its armed forces had intended to strike the house next door, but that errors were made in the planning of the operation.[574] The Mission expresses elsewhere its concerns about this explanation (see chap. XI). However, since it appears to be the only incident that has elicited an admission of error by the Israeli authorities, the Mission takes the view that the Government of Israel does not consider the other strikes brought to its attention to be the result of similar or other errors.

1188. In relation to air strikes, the Mission notes the statement issued in Hebrew posted on the website of the Israeli armed forces on 23 March 2009:

> Official data gathered by the Air Force concluded that 99 per cent of the firing that was carried out hit targets accurately. It also concluded that over 80 per cent of the bombs and missiles used by the Air Force are defined as accurate and their use reduces innocent casualties significantly…[575]

1189. The Mission understands this to mean that in over 80 per cent of its attacks the Air Force deployed weapons considered to be accurate by definition – what are known colloquially as precision weapons as a result of guidance technology. In the other 20 per cent of attacks, therefore, it apparently used unguided bombs. According to the Israeli armed forces, the fact that these 20 per cent were unguided did not diminish their accuracy in hitting their targets, but may have caused greater damage than those caused by precision or "accurate" weapons.

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[572] See "The operation in Gaza…", para. 236.

[573] See, for example, a soldier's report of a junior officer's briefing before entering Gaza: "I want aggression. If we suspect a building we take down this building. If there's a suspect on one of the floors of that building we shell it. No second thoughts. It's either them or us. Let it be them… No one has second thoughts. Let error take their lives, not ours". See transcript from Channel Ten News on record with the Mission of soldiers speaking at a seminar in Tel Aviv.

[574] "The operation in Gaza…", paras. 385-387. The Israeli Government's comments in relation to the attack on a truck with oxygen tanks is somewhat more equivocal. The blame is put on the proximity of the tanks to alleged armed groups. Ibid., paras. 398-400.

[575] http://dover.idf.il/IDF/News_Channels/today/09/03/2301.htm (Mission's own translation)

1190. These represent extremely important findings by the Israeli Air Force. It means that what was struck was meant to be struck. It should also be borne in mind that the beginning of the ground phase of the operation on 3 January did not mean the end of the use of the Israeli Air Force. The statement indicates:

> During the days prior to the operation "Cast Lead", every brigade was provided with an escorting UAV squadron that would participate in action with it during the operation. Teams from the squadrons arrived at the armour and infantry corps, personally met the soldiers they were about to join and assisted in planning the infantry manoeuvres. The UAV squadrons had representatives in the command headquarters and officers in locations of actual combat who assisted in communication between the UAVs – operated by only two people, who are in Israeli territory – and the forces on the ground. The assistance of UAVs sometimes reached a ratio of one UAV to a regiment and, during extreme cases, even one UAV to a team.

1191. Taking into account the ability to plan, the means to execute plans with the most developed technology available, the indication that almost no errors occurred and the determination by investigating authorities thus far that no violations occurred, the Mission finds that the incident and patterns of events that are considered in this report have resulted from deliberate planning and policy decisions throughout the chain of command, down to the standard operating procedures and instructions given to the troops on the ground.

B. The development of strategic objectives in Israeli military thinking

1192. Israel's operations in the Occupied Palestinian Territory have had certain consistent features. In particular, the destruction of buildings, including houses, has been a recurrent tactical theme.[576] The specific means Israel has adopted to meet its military objectives in the Occupied Palestinian Territory and in Lebanon have repeatedly been censured by the United Nations Security Council, especially its attacks on houses.[577] The military operations from 27 December to 18 January did not occur in a vacuum, either in terms of proximate causes in relation to the Hamas/Israeli dynamics or in relation to the development of Israeli military thinking about how best to describe the nature of its military objectives.

1193. A review of the available information reveals that, while many of the tactics remain the same, the reframing of the strategic goals has resulted in a qualitative shift from relatively focused operations[578] to massive and deliberate destruction.

1194. In its operations in southern Lebanon in 2006, there emerged from Israeli military thinking a concept known as the Dahiya doctrine, as a result of the approach taken to the Beirut neighbourhood of that name.[579] Major General Gadi Eisenkot, the Israeli Northern Command chief, expressed the premise of the doctrine:

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[576] See, for example, Housing and Land Rights Network – Habitat International Coalition's submission to the Mission (pp. 12-28).

[577] Security Council resolutions 101 (1953), 106 (1955), 111 (1956), 171 (1962), 228 (1966), 248 (1968), 265 (1969), 270 (1969), 313 (1972), 316 (1972), 332 (1973), 347 (1974), 450 (1979), 501 (1982), 515 (1982), 520 (1982) and 1544 (2004).

[578] The reference to relatively focused operations here should not be misunderstood as an indication that all such actions were acceptable in terms of distinction and proportionality. It is merely a comparative reference.

1195. What happened in the Dahiya quarter of Beirut in 2006 will happen in every village from which Israel is fired on. […] We will apply disproportionate force on it and cause great damage and destruction there. From our standpoint, these are not civilian villages, they are military bases. […] This is not a recommendation. This is a plan. And it has been approved.[580]

1196. After the war in southern Lebanon in 2006, a number of senior former military figures appeared to develop the thinking that underlay the strategy set out by Gen. Eiskenot. In particular Major General (Ret.) Giora Eiland[581] has argued that, in the event of another war with Hizbullah,[582] the target must not be the defeat of Hizbullah but "the elimination of the Lebanese military, the destruction of the national infrastructure and intense suffering among the population… Serious damage to the Republic of Lebanon, the destruction of homes and infrastructure, and the suffering of hundreds of thousands of people are consequences that can influence Hizbollah's behaviour more than anything else".[583]

1197. These thoughts, published in October 2008 were preceded by one month by the reflections of Col. (Ret.) Gabriel Siboni:[584]

> With an outbreak of hostilities, the IDF will need to act immediately, decisively, and with force that is disproportionate to the enemy's actions and the threat it poses. Such a response aims at inflicting damage and meting out punishment to an extent that will demand long and expensive reconstruction processes. The strike must be carried out as quickly as possible, and must prioritize damaging assets over seeking out each and every launcher. Punishment must be aimed at decision makers and the power elite… In Lebanon, attacks should both aim at Hizbollah's military capabilities and should target economic interests and the centres of civilian power that support the organization. Moreover, the closer the relationship between Hezbollah and the Lebanese Government, the more the elements of the Lebanese State infrastructure should be targeted. Such a response will create a lasting memory among … Lebanese decision makers, thereby increasing Israeli deterrence and reducing the likelihood of hostilities against Israel for an

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[579] During the 2006 Lebanon war, Israel inflicted massive destruction on Dahiya, which it considered to be a stronghold of Hizbullah.

[580] Ynet, "Israel warns Hizbullah war would invite destruction", 10 March 2008.

[581] Former Chief of the Israeli National Security Council, former National Security Adviser to the Prime Minister, and prior to that head of the IDF Operation Branch.

[582] Although Major General Eiland was writing about Lebanon and the Syrian Arab Republic, it is the suggestion of the objectives and the means of obtaining them that is striking in relation to what occurred in Gaza.

[583] Giora Eiland, "The third Lebanon war: target Lebanon", Strategic Assessment, vol. 11, No. 2 (November 2008), p. 9.

[584] Colonel (Res.) of the IDF. Researcher for Institute for National Strategic Studies. Former fighter and commander in the Golani Brigade, completed his service as the brigade's reconnaissance unit commander. Within the scope of his reserve service, he served as senior staff officer of the Golani Brigade, Deputy Commander of the logistics unit, and Chief of Staff of an armoured division in the north.

> extended period. At the same time, it will force Syria, Hizbollah, and Lebanon to commit to lengthy and resource-intensive reconstruction programmes.…
>
> This approach is applicable to the Gaza Strip as well. There, the IDF will be required to strike hard at Hamas and to refrain from the cat and mouse games of searching for Qassam rocket launchers. The IDF should not be expected to stop the rocket and missile fire against the Israeli home front through attacks on the launchers themselves, but by means of imposing a ceasefire on the enemy.[585]

1198. General Eisenkot used the language quoted above while he was in active service in a senior command position and clarified that this was not a theoretical idea but an approved plan. Major General Eiland, though retired, was a man of considerable seniority. Colonel Siboni, while less senior than the other two, was nonetheless an experienced officer writing on his field of expertise in a publication regarded as serious.

1199. The Mission does not have to consider whether Israeli military officials were directly influenced by these writings. It is able to conclude from a review of the facts on the ground that it witnessed for itself that what is prescribed as the best strategy appears to have been precisely what was put into practice.

C. Official Israeli statements on the objectives of the military operations in Gaza

1200. The Mission is aware of the official statements on the goals of the military operations:

> The Operation was limited to what the IDF believed necessary to accomplish its objectives: to stop the bombardment of Israeli civilians by destroying and damaging the mortar and rocket launching apparatus and its supporting infrastructure, and to improve the safety and security of Southern Israel and its residents by reducing the ability of Hamas and other terrorist organizations in Gaza to carry out future attacks.[586]

1201. The Israeli Government states that this expression of its objectives is no broader than those expressed by NATO in 1998 during its campaign in the Federal Republic of Yugoslavia.

1202. The Mission makes no comment on the legality or otherwise of NATO actions there.

D. The strategy to achieve the objectives

1203. The issue that is of special concern to the Mission is the conceptualization of the "supporting infrastructure". The notion is indicated quite clearly in General Eisenkot's statements in 2006 and reinforced by the reflections cited by non-serving but well-informed military thinkers.

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[585] Siboni, op. cit. This appears very similar to the so-called Dahiya doctrine. See, for example, Ed Blanche, Jane's Rockets and Missiles, 3 February 2009, citing Major General Gadi Eisenkot.

[586] See "The operation in Gaza…", para. 83.

1204. On 6 January 2009, during the military operations in Gaza, Deputy Prime Minister Eli Yishai[587] stated: "It [should be] possible to destroy Gaza, so they will understand not to mess with us". He added that "it is a great opportunity to demolish thousands of houses of all the terrorists, so they will think twice before they launch rockets". "I hope the operation will come to an end with great achievements and with the complete destruction of terrorism and Hamas. In my opinion, they should be razed to the ground, so thousands of houses, tunnels and industries will be demolished". He added that "residents of the South are strengthening us, so the operation will continue until a total destruction of Hamas [is achieved]".[588]

1205. On 2 February 2009, after the end of the military operations, Eli Yishai went on: "Even if the rockets fall in an open air or to the sea, we should hit their infrastructure, and destroy 100 homes for every rocket fired."[589]

1206. On 13 January 2009, Israel's Foreign Minister, Tzipi Livni, was quoted as saying:

> We have proven to Hamas that we have changed the equation. Israel is not a country upon which you fire missiles and it does not respond. It is a country that when you fire on its citizens it responds by going wild – and this is a good thing.[590]

1207. It is in the context of comments such as these that the massive destruction of businesses, agricultural land, chicken farms and residential houses has to be understood. In particular, the Mission notes the large-scale destruction that occurred in the days leading up to the end of the operations. During the withdrawal phase it appears that possibly thousands of homes were destroyed. The Mission has referred elsewhere in this report to the "day after" doctrine,[591] as explained in the testimonies of Israeli soldiers, which can fit in with the general approach of massively disproportionate destruction without much difficulty.

1208. The concept of what constituted the supporting infrastructure has to be understood not only in the context of the military operations of December and January, but in the tightening of the restrictions of access to goods and people into and out of Gaza, especially since Hamas took power. The Mission does not accept that these restrictions can be characterized as primarily an attempt to limit the flow of materials to armed groups. The expected impact, and the Mission believes primary purpose, was to bring about a situation in which the civilian population would find life so intolerable that they would leave (if that were possible) or turn Hamas out of office, as well as to collectively punish the civilian population.

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[587] During the military operation in Gaza, Eli Yishai served as Deputy Prime Minister and Minister of Industry, Trade, and Labour in the Government of Mr. Olmert. He serves in the current Government headed by Mr. Netanyahu as Internal Affairs Minister as well as Deputy Prime Minister. During the military operations in Gaza, he was also a member of the Security Cabinet for National Security within the Israeli Cabinet. Its duties include setting the targets of the security system and its policies; questions related to the Israeli armed forces, issues related to intelligence, foreign policy, military and security operations, and coordination of the activities of the Government in "Judea, Samaria and Gaza". See http://www.pmo.gov.il/PMO/Archive/Decisions/2006/05/des20.htm (in Hebrew).

[588] http://news.walla.co.il/?w=//1412570 (in Hebrew).

[589] http://www.ynet.co.il/Ext/Comp/ArticleLayout/CdaArticlePrintPreview/1,2506,L-3665452,00.html (2 February 2009, in Hebrew).

[590] The Independent, Israeli cabined divided over fresh Gaza surge, 13 January 2009.

[591] See chap. XIII.

1209. The Israeli Government has stated:

> While Hamas operates ministries and is in charge of a variety of administrative and traditionally governmental functions in the Gaza Strip, it still remains a terrorist organization. Many of the ostensibly civilian elements of its regime are in reality active components of its terrorist and military efforts. Indeed, Hamas does not separate its civilian and military activities in the manner in which a legitimate government might. Instead, Hamas uses apparatuses under its control, including quasi-governmental institutions, to promote its terrorist activity.[592]

1210. The framing of the military objectives Israel sought to strike is thus very wide indeed. There is, in particular, a lack of clarity about the concept of promoting "terrorist activity": since Israel claims there is no real division between civilian and military activities and it considers Hamas to be a terrorist organization, it would appear that anyone who supports Hamas in any way may be considered as promoting its terrorist activity. Hamas was the clear winner of the latest elections in Gaza. It is not far-fetched for the Mission to consider that Israel regards very large sections of the Gazan civilian population as part of the "supporting infrastructure".

1211. The indiscriminate and disproportionate impact of the restrictions on the movement of goods and people indicates that, from as early as some point in 2007, Israel had already determined its view about what constitutes attacking the supporting infrastructure, and it appears to encompass effectively the population of Gaza.

1212. A statement of objectives that explicitly admits the intentional targeting of civilian objects as part of the Israeli strategy is attributed to the Deputy Chief of Staff, Maj. Gen. Dan Harel. While the Israeli military operations in Gaza were under way, Maj. Gen. Harel was reported as saying, in a meeting with local authorities in southern Israel:

> This operation is different from previous ones. We have set a high goal which we are aiming for. We are hitting not only terrorists and launchers, but also the whole *Hamas* government and all its wings. […] We are hitting government buildings, production factories, security wings and more. We are demanding governmental responsibility from Hamas and are not making distinctions between the various wings. After this operation there will not be one Hamas building left standing in Gaza, and we plan to change the rules of the game.[593]

E. Conclusions

1213. The Israeli military conception of what was necessary in a future war with Hamas seems to have been developed from at least the time of the 2006 conflict in southern Lebanon. It finds its origin in a military doctrine that views disproportionate destruction and creating maximum disruption in the lives of many people as a legitimate means to achieve military and political goals.

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[592] "The operation in Gaza…", para. 235.

[593] *Ynet*, "Deputy chief of staff: worst still ahead".

1214. Through its overly broad framing of the "supporting infrastructure", the Israeli armed forces have sought to construct a scope for their activities that, in the Mission's view, was designed to have inevitably dire consequences for the non-combatants in Gaza.

1215. Statements by political and military leaders prior to and during the military operations in Gaza leave little doubt that disproportionate destruction and violence against civilians were part of a deliberate policy.[594]

1216. To the extent to which statements such as that of Mr. Yishai on 2 February 2009 indicate that the destruction of civilian objects, homes in that case, would be justified as a response to rocket attacks ("destroy 100 homes for every rocket fired"), the Mission is of the view that reprisals against civilians in armed hostilities are contrary to international humanitarian law.[595] Even if such actions could be considered a lawful reprisal, they do not meet the stringent conditions imposed, in particular they are disproportionate,[596] and violate fundamental human rights and obligations of a humanitarian character.[597] One party's targeting of civilians or civilian areas can never justify the opposing party's targeting of civilians and civilian objects, such as homes, public and religious buildings, or schools.

XVII. THE IMPACT OF THE BLOCKADE AND OF THE MILITARY OPERATIONS ON THE PEOPLE OF GAZA AND THEIR HUMAN RIGHTS

"A military commander's obligation does not end with avoiding harm to the lives and the dignity of the local residents, a "negative obligation", but his obligation is also "positive"- he must protect the lives and dignity of the residents, within the constraints of the time and place…." Justice Barak (HCJ 764/04)

"As long as Israel has control of the transfer of necessities and the supply of humanitarian needs to the Gaza Strip, it is bound by the obligations of international humanitarian law to allow the civilian population to have access, inter alia, to medical facilities, food and water, as well as additional humanitarian items".
Justice Beinisch (HCJ 201/09)

1217. During its visits to the Occupied Palestinian Territory, and its meetings and hearings in Gaza, Amman, Geneva and other places, the Mission saw for itself and received reports and testimonies about the negative effects that the severe restrictions on the movement of goods and people from and to the Gaza Strip had caused to the full enjoyment of a range of social, economic and civil rights by women, men and children. These reports and testimonies come from a variety of sources, including businesspeople, industry owners, ordinary residents, public officials and NGOs in the Occupied Palestinian Territory and abroad.

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[594] Highlighting the pattern of military actions targeting civilian shelters and shelter seekers, the Habitat International Coalition concludes: "The official statements that accompany these actions […] seem to reflect a presumption that any source of brutality against the indigenous inhabitants would convert the victims into agents of the attackers' preferred outcome: defeat of resistance" (submission, cited, p. 40).

[595] See Additional Protocol I, art. 51 (6).

[596] *Customary International Humanitarian Law*…, pp. 513–518.

[597] See also article 50 of the articles on responsibility of States for internationally wrongful acts of the International Law Commission (General Assembly resolution 56/83, annex).

1218. People in Gaza, as in other parts of the Occupied Palestinian Territory, have been living under foreign occupation for decades and enduring the restrictions and other effects of the policies implemented by the occupying Power. While the start of the blockade and the most recent military operations have undoubtedly added to those restrictions and scarcities, people in Gaza have not been living in what can be called a "normal" situation for a long time.

1219. The restrictions imposed by Israel on the imports to and exports from the Gaza Strip through the border crossings as well as the naval and airspace blockade have had a severe impact on the availability and accessibility of a whole range of goods and services necessary for the people of Gaza to enjoy their human rights. Their already eroded ability to access and buy basic goods was compounded by the effects of the four-week Israeli military campaign, which further restricted access to those essential items and destroyed goods, land, facilities and infrastructure vital for the enjoyment of their fundamental rights. In conjunction, the blockade and the military hostilities have created a situation in which most people are destitute. Women and children have been particularly affected. The current situation has been described as a crisis of human dignity.[598]

A. The economy, livelihoods and employment

1220. The Mission received information about the state of the economy, employment and family livelihoods in the Gaza Strip. Before the December-January military operations, the Gaza economy was already in dire straights, with few business sectors able to operate at full capacity. The blockade restricted or denied entry to a range of items and energy necessary for the economy to function. These included fuel and industrial diesel for the Gaza power plant to produce enough electricity for factories and businesses to function and for agricultural activities to continue on a regular basis. The net result was a stalled economy, with many businesses, factories and farms either closed or operating at reduced capacity.

1221. Electricity was purchased directly from Israel (51 per cent) and Egypt (7 per cent), while the Gaza power plant produced only 34 per cent, leaving an 8 per cent electricity deficit. Following additional cuts by Israel in the supply of industrial fuel, the Gaza power plant further reduced its output. The shortage of fuel caused the plant to malfunction, while the lack of spare parts and maintenance is likely to damage the plant in the long term.[599] According to OCHA, the electricity shortfall in the Gaza Strip was 41 per cent by 15 December 2008. Cooking gas was also restricted although less drastically.

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[598] WHO report 2009, p. 8.

[599] OCHA, "Gaza humanitarian situation report: the impact of the blockade on the Gaza Strip", 15 December 2008.

1222. Raw materials, equipment, spare parts and other inputs necessary for industrial and agricultural activity were not allowed into the Gaza Strip either.

1223. The consequences for day-to-day life were considerable. Some areas of the Gaza Strip were left without electricity for several hours a week, many households, especially those in buildings that depend on the use of water pumps, had access to water only a few hours a week. Intermittent electricity supply damaged medical equipment in hospitals and doctors' practices, and generally disrupted civilian life. The operation of sewage treatment facilities was also reduced and increased quantities of untreated sewage were dumped into the sea, causing public health risks and pollution, which in turn affected fishing.

1224. Several companies closed or cut back their operations, laying off employees, who consequently lost their livelihoods. Information provided to the Mission covering June 2007 to July 2008 showed that 98 per cent of industries were temporarily shut down and five establishments were relocated to the West Bank and Jordan. Around 16,000 workers were laid off. The ban on all exports caused losses for the agricultural sector estimated at US$ 30 million up until July 2008 and 40,000 jobs lost. Similarly, the construction sector endured severe losses resulting from the halt in development projects and other construction projects owing to the absence of construction materials. Some 42,000 workers were reported to have lost their jobs as a result.[600] Those who were laid off searched for employment in other sectors, such as agriculture, or joined the ranks of those who live on food assistance from the United Nations and aid agencies.

1225. As a result of the closure of the crossings to the transit of people, many families also lost the financial support they had from relatives, usually the male head of the family, who used to work abroad, either in Israel or in neighbouring Arab countries.[601] In its submission to the Mission, UNCTAD stated that 15.4 per cent of Gaza's labour force was employed in Israel by 2000.[602] In his presentation to the Mission, the economist Shir Hever explained that by 2009 no one from Gaza could find work in Israel. Even Palestinian workers from the West Bank mostly work in industrial zones in settlements rather than in Israel.[603]

1226. By December 2008 the destructive impact of the blockade on the local economy had doubled unemployment levels. While in 2007 79 per cent of households lived below the official poverty line (US$ 4 per capita/day) and some 70 per cent below the deep poverty line (US$ 3 per capita/day), these figures were expected to increase by the end of 2008 – even before the Israeli military operations. The Mission received information from organizations explaining how the agricultural sector had traditionally absorbed unemployed workers from other sectors, but in the circumstances imposed by the blockade, without fertilizers, pesticides, machinery, spare parts and, crucially, without access to markets, it could no longer fulfil the role of shock absorber.[604] In its submission to the Mission, UNCTAD noted that when the industrial and agricultural sectors lost their capacity to provide jobs, public administration and services absorbed up to 54 per cent of Gaza's labour force (up from 37 per cent in 1999). UNCTAD concluded:

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[600] Palestine Trade Center (PALTRADE), "Gaza Strip: A year through siege", July 2008.

[601] GISHA Legal Center for Freedom of Movement and Physicians for Human Rights – Israel, *Rafah Crossing: Who holds the keys?* (March 2009).

[602] UNCTAD submission, p. 4.

[603] Mission meeting with Shir Hever, Alternative Information Centre, 2 July 2009.

> The ultimate impact of this momentum is the systematic erosion of the Palestinian productive base to deprive them from the ability to produce and feed themselves, and turn them into poor consumers of essential goods imported mainly from Israel and financed mainly by donors.

1227. The military operations destroyed a substantial part of the Gaza Strip's economic infrastructure and its capacity to support decent livelihoods for families. Many factories and businesses were directly targeted and destroyed or damaged. Poverty, unemployment and food insecurity increased dramatically.

1228. Information provided to the Mission showed that some 700 private (industry and trade) businesses were damaged or destroyed during the military operations, with direct losses totalling approximately US$ 140 million. The industrial sector appeared the most affected, as it suffered 61 per cent of those losses, in particular in the sub-sectors of construction and food.[605] Because of the extent and gravity of the destruction inflicted on the industrial sector, businesspeople and industrialists who spoke to the Mission stated their belief that Israel had as one of its military objectives the destruction of local industrial capacity so as to harm the prospects for an economic recovery in the Gaza Strip.[606]

1229. The severe restrictions on the availability of banknotes imposed by Israel caused serious disruptions in economic transactions and affected the ability of the public sector and the non-governmental sector to carry out operations such as contracting or procuring goods and services.

1230. The agricultural sector, including crop farming, fisheries, livestock farming and poultry farming, suffered direct losses worth some US$ 170 million. Indirect losses have still to be definitively calculated. One business organization estimates that 60 per cent of all agricultural land had been destroyed, 40 per cent directly during the military operations.[607] Moreover, 17 per cent of all orchards, 8.3 per cent of livestock, 2.6 per cent of poultry, 18.1 per cent of hatcheries, 25.6 per cent of beehives, 9.2 per cent of open fields and 13 per cent of groundwater wells were destroyed. Agriculture had already lost a third of its capacity since the start of the second intifada and the frequent Israeli incursions, according to NGO estimates used by UNDP-Gaza.[608] Parts of the land were reportedly contaminated by unexploded munitions and chemical weapons residues (e.g. white phosphorous) and would need to be tested and cleared before agricultural activity could resume.[609] Some 250 agricultural wells were reportedly destroyed or severely damaged.

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[604] Meetings with representatives from the agricultural sector in Gaza, 30 June 2009; meeting with representatives of Campaign to End the Siege, Gaza, 29 June 2009.

[605] Private Sector Coordination Council Gaza Governorates, "Gaza private sector: Post-war status and needs", 25 February 2009.

[606] Interviews with Amr Hamad of the Palestinian Federation of Industries and with Ali Abu Shalah of the Palestinian Business Association.

[607] "Gaza private sector: post-war status…", p. 5.

[608] UNDP, FAO and Ministry of Agriculture, "Assessment of impact of cast lead operation: estimated direct losses to agriculture in the Gaza Strip between 27 December 2008 and 18 January 2009".

1231. Fishing that provided direct employment to some 3,000 people was also affected by the blockade and the military operations. Several boats and some fishermen were directly hit. The Mission met representatives of fishermen's associations and a fisherman testified at the public hearings in Gaza.[610] One fisherman interviewed by the Mission explained that he had previously owned a fishing boat, mainly to fish sardines. It was hit by shelling as it was moored beside the civil defence buildings that were hit by air strikes on 27 December. Half of it was destroyed. Another small boat was also destroyed as were the nets. The family house was also destroyed and he had been out of work since the beginning of the military operations in December. However, his fishing activities had already been affected before the operations, when the Government of Israel had imposed a limit of six nautical miles for fishing, and then further reduced it to only three.[611]

1232. The continuation of the blockade does not permit the reconstruction of the economic infrastructure that was destroyed. Not only do construction materials continue to be banned but the provision of energy is also still insufficient and irregular. Local purchasing capacity being shattered, there is not enough market demand for many products.

1233. Exports also continue to be prohibited, with the exception of some truckloads of flowers that crossed the borders between January and March 2009. Without external markets, local production of all kinds has no prospect and so employment and livelihoods will remain precarious and diminished. A strawberry farmer and the Head of the Association of Strawberry Farmers based in Beit Lahia explained that before the military operations he used to export up to 2,000 tons of strawberries to Europe. Hundreds of *donums* of land were destroyed during the operations as well as some 300 greenhouses and 2,000 acres of citrus trees. As a result, they had lost the European market for their products.[612]

B. Food and nutrition

1234. The availability of food in the Gaza Strip is determined by the amount imported through the crossings and that which is locally produced. The Mission received credible information indicating that during the months preceding the military operations both sources of food suffered from the severe restrictions imposed by Israel.

1235. The closing of the Karni grain conveyor belt, the only mechanism for importing wheat, during part of December, resulted in the depletion of wheat stocks, forcing the six mills in the Gaza Strip to close down or reduce operations. The el-Bader flour mill appeared to be the only one that kept working as its owners had kept a good stock of grain, but it was later bombed and destroyed (see chap. XIII). However, about one third of the previous number of truckloads of wheat continued entering through the Kerem Shalom crossing. The blockade was tightened following the confrontations of November 2008, further restricting United Nations food assistance. On 18 December, UNRWA was compelled to halt its food distribution programme to thousands of families because its stocks were depleted. It also had to downsize its cash-for-work programmes as it ran out of banknotes.

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[609] "Gaza private sector: post-war status…", p. 5; FAO, "Impact of Gaza crisis: Agricultural sector report", p. 16, WHO Report, p. 29.

[610] Public hearings, Gaza, 29 June 2009.

[611] Meeting with the Mission, Gaza, 3 June 2009.

[612] Meeting with the Mission, Gaza, 3 June 2009.

1236. By December 2008 food insecurity was on the rise. Food security is the capacity of each individual to have access to sufficient and adequate food at all times. The Mission received information indicating that rising food insecurity was the result falling income levels, eroded livelihoods and higher food prices. Some food items were also unavailable in the local markets. Consequently, the average Gazan household was spending two thirds of its income on food.[613] People had to reduce the quantity and the quality of food they ate, shifting a diet based on low-cost and high-energy cereals, sugar and oil.

1237. Changes in diet patterns are likely to prejudice the long-term health and nutrition of the population. According to the WHO office in Gaza, there are indications of chronic micronutrient deficiencies among the population, in particular among children. Among the most worrying indicators is the high prevalence of stunting among 6- to 16-year-old children (7.2 per cent), while the prevalence of thinness among that group was 3.4 per cent for 2008 (the WHO standard is 5 per cent). Levels of anaemia are alarming: 66 per cent on average among 9- to 12-month-old babies (the rate being higher for girls (69 per cent)). On average, 35 per cent of pregnant women suffer from anaemia.[614]

1238. During the military operations the availability and quality of fresh food dropped: local production was suspended during the fighting and local produce was spoilt. Mr. Muhammad Husein al-Atar, Mayor of al-Atatra, told the Mission how agricultural land in his neighbourhood was razed. The area is close to the Israeli border and 95 per cent of the work is farming-related. Israeli military incursions had been happening since 2000 accompanied by destruction and bulldozing. As a result, 50,000 acres of land had not a single tree left standing and between 10 and 15 farmers had been killed every year during the last nine years. During the December – January military operations the area was bombed from the air, land and sea. He had personally lost three (industrial) refrigerators, each capable of holding 600 tons of vegetables, for instance. His sister's chicken farms were also destroyed, including some 70,000 chickens (see chap. XIII).[615]

1239. The destruction of land and greenhouses has an impact on the availability of fresh food in the Gaza Strip and, consequently, on the total supply of micronutrients to the population. Satellite imagery commissioned by the Mission shows that for the whole Gaza Strip an estimated 187 greenhouse complexes were either destroyed or severely damaged, representing approximately 30.2 hectares. Of all the destroyed greenhouses 68.6 per cent were in the Gaza and Gaza North Governorates; and 85.4 per cent were destroyed or damaged during the last week of the military operations. Satellite imagery also gives strong indications that tanks and/or heavy vehicles were likely to have been responsible for most of the damage.[616]

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[613] "Gaza humanitarian situation report: the impact…".

[614] Nutrition indicators for 2008 and 2009 provided by WHO office in Gaza to the Mission.

[615] Meeting with the Mission, 3 June 2009.

1240. Despite the increased quantities of food allowed into Gaza since the beginning of hostilities, representing between 60 and 80 per cent of all truckloads, wheat flour was in short supply. This was probably the result of the severe depletion of local stocks following the tighter restrictions during December. After the ceasefire was declared by the parties to the conflict, access to food remained problematic for most people many prices had risen and there was a lack of income and banknotes. It was reported that the military operations caused food insecurity to increase and affect up to 75 per cent of the population.[617]

1241. In a rapid assessment, FAO and the World Food Programme (WFP) found that food availability was back to pre-military operations levels, but the supply of fresh food was likely to decrease in the immediate future due to the large-scale destruction. Prices continued to be very high and some items were prohibitively expensive (e.g. poultry, eggs and meat) and unaffordable. However, severe access problems persisted and were aggravated for a population whose income and livelihoods had been shattered, despite the food assistance provided by the United Nations and aid agencies.[618]

C. Housing

1242. Figures about the overall damage to residential housing vary according to the source and time of the measurement as well as the methodology. The human rights NGO Al Mezan reports that a total 11,135 homes were partially or fully destroyed.[619] According to the human rights NGO Al-Dameer-Gaza, 2,011 civilian and cultural premises were destroyed, of which 1,404 were houses that were completely demolished and 453 were partially destroyed or damaged.[620] A UNDP survey immediately after the end of military operations reported 3,354 houses completely destroyed and 11,112 partially damaged.[621] The destruction was more serious in the north, where 65 per cent of houses were completely destroyed. As a result of the destruction, more than 600 tons of rubble had to be removed, with the consequent costs and potential impact on the environment and public health. Information provided to the Mission showed that much of the construction in Gaza contained important amounts of asbestos, the particles of which had been or could be released into the air at the time of destruction or removal. The refugee population was concentrated in the north and the destruction of residential housing appeared to have particularly affected them.

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[616] UNOSAT satellite imagery, p. 23. See also chap. XIII.

[617] OCHA, *The Humanitarian Monitor*, No. 33 (January 2009).

[618] FAO and WFP, "Report of the rapid qualitative emergency food security assessment – Gaza Strip", 24 February 2009.

[619] Al Mezan Center for Human Rights, "Cast lead offensive in numbers".

[620] Al-Dameer Gaza, "IOF targets civilian premises and cultural properties during its offensive on the Gaza Strip", May 2009.

[621] *The Humanitarian Monitor*, No. 33, p. 7. A figure similar to this was provided by the Palestinian Authority in its reply to questions by the Mission, 5 August 2009.

1243. The destruction or damage of their homes forced many people to flee and find shelter with relatives or agencies providing assistance, such as UNRWA. At the height of the military operations UNRWA was providing shelter to 50,896 displaced persons in 50 shelters. This number was estimated to be a fraction of those who had become homeless, most of whom found temporary shelter with relatives. The Mission was informed that this situation created extreme hardship for people who had to share already deteriorated and limited housing, sanitary and water facilities. It saw for itself people who were still living in tents some six months after the end of the operations.

1244. Children and women were particularly affected by the hardship caused by the destruction of homes and the displacement. Housing and Land Rights Network – Habitat International Coalition reported that "of those forced to seek shelter following the military damage or destruction of their home, over half were children. While female-headed households constitute only a relatively small percentage of the total affected families (7 per cent), their number in absolute terms, 763 such families, is significant."[622]

1245. The impact of the destruction of housing is aggravated by the substantial destruction of the Gaza construction industry during the military operations. In chapter XIII, the Mission described the destruction of the Atta Abu Jubbah cement-packaging plant, which formed a significant part of the construction materials industry in Gaza. The Mission also noted reports regarding the destruction of 19 producing plants (representing 85 per cent of the production capacity of the Gaza factories of ready-mix concrete). External supplies of concrete and other building materials into Gaza are entirely controlled by Israel, which has banned imports of cement into Gaza. The thousands of families who have lost their shelter as a result of the military operations are therefore prevented by the blockade imposed by Israel from rebuilding their homes.

D. Water and sanitation

1246. The Mission received submissions, testimonies and information about the effects of the blockade and of the military operations on the supply of and access to water and sanitation facilities by the population of the Gaza Strip.[623] During the months preceding the military operations the water and sanitation sectors were already under severe strain. The lack of construction materials, pipes and spare parts had prevented the building of additional infrastructure and the proper maintenance of existing facilities. Desalinization plants and works to preserve the aquifer had to be postponed. By December 2008, OCHA reported that the degradation of the system "is posing a major public health hazard".[624] Frequent power outages, fuel shortages and a lack of spare parts for electricity generators had also affected the functioning of the water and sanitation systems.

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[622] Submission to the Mission by Housing and Land Rights Network -- Habitat International Coalition, "Targeting shelters and shelter seekers during operation Cast Lead in the context of Israeli military practice".

[623] Submission by the Centre on Housing Rights and Evictions (COHRE); Al Mezan Center for Human Rights, "The impact of the Israeli offensive on the right to water in the Gaza Strip", February 2009.

[624] "Gaza humanitarian situation report: the impact…".

1247. By December 2008, it was reported that some 80 per cent of Gaza's water wells were only partially functioning while the others were not functioning at all. This situation had already affected the population's access to water: over half of the residents of Gaza City had access to running water few hours a week, with those living in houses and buildings using water pumps spending many hours trying to get water by other means. Of the water supplied in Gaza 80 per cent did not meet WHO standards for drinking water owing to, among other factors, the shortage of chlorine to purify the water. Important health risks were consequently likely to arise. Other health hazards were expected to arise from the practice of discharging untreated or partially treated wastewater into the sea. More than 70 million litres a day were discharged into the sea, creating significant environmental damage and health risks for human beings and marine life.

1248. As with other sectors, the military operations worsened the situation in the water and sanitation sector. Services and infrastructure already partially paralysed or in serious need of maintenance suffered further destruction or damage. The Gaza wastewater treatment plant was hit sometime between 3 and 10 January and one of its lagoons was severely damaged (see chap. XIII). Sewage pipes leading to the plant and others in different parts of the city were hit or damaged. Up to 11 water wells that supplied water for human consumption were hit and 3 completely destroyed.[625] Thousands of metres of water and sewage pipes/networks were destroyed or damaged and around 5,700 rooftop water tanks destroyed and some 2,900 damaged.

1249. By the end of January only 70 per cent of Gaza's water wells were working, either whether fully or partially, i.e. 10 per cent less than before the hostilities. At the height of the military operations some 500,000 Palestinians did not have access to running water at all, whereas the rest received water for few hours a week. Sanitation and water facilities in public shelters were overwhelmed, and raw sewage ran through fields and streets in some areas. The water authorities' reparations team were prevented from going to the sites to carry out urgent repairs and had to wait in most cases until Israeli troops had withdrawn. All urgent repairs were done on a provisional basis given the lack or shortage of construction materials and equipment. The Mission witnessed how precarious those repairs could be when it saw one sewage pipe in the vicinity of the Gaza wastewater treatment plant explode during a site visit.

E. Environment

1250. The Mission has received comments and concerns from non-governmental organizations and concerned individuals in Gaza relating to threatened environmental damage by reason of munitions or debris from munitions. These concerns relate to the fear that hazardous material might have remained or will remain in the soil and water of parts of the Gaza Strip for indefinite periods of time and could enter the food chain or otherwise be hazardous to life.

1251. The Mission was unable to further investigate these concerns, but is aware of an environmental impact study being undertaken by the United Nations Environmental Programme (UNEP) in the Gaza Strip. Preliminary results from UNEP indicate that the environment in the Gaza Strip has been seriously impacted by the Israeli military operations of December-January.

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[625] "Damage assessment report…". Al Mezan reports that 112 wells were destroyed but it clarifies that this figure includes agricultural wells; COHRE submission to the Mission.

In particular, the groundwater in Gaza show high nitrate levels exceeding WHO ceilings, putting infants at risk of nitrate poisoning.

F. Physical and mental health

1252. The capacity of the health sector in the Gaza Strip was already diminished by the blockade when the Israeli offensive started. While hospitals and clinics continued operating, the quality of their service and its accessibility were eroded. The insufficient and erratic supply of electricity caused equipment to malfunction even when the staff had recourse to generators. Power cuts and water impurities damaged equipment and created additional health hazards. The lack of maintenance and spare parts that were blocked at the crossings further compounded the situation. In addition, the lack of construction materials and inputs hampered the development of additional facilities and needed infrastructure.

1253. Reported confrontation between the Palestinian Authority in Ramallah and the Gaza authorities also affected the quantity and quality of the service provided. The Ministry of Health in Ramallah had been responsible for the supply of medicines to Gaza since September 2008, but it was reported that few trucks with medicines actually reached the Gaza Strip after that time resulting in serious availability problems for some 20 per cent of essential medicines. The referral of patients needing specialized treatment abroad (e.g. in Israel, Jordan and Egypt) was also affected by the blockade established in 2007. Before that date only some 9 per cent of patients intending to cross the border were rejected or their permits delayed, but that proportion had reached some 22 per cent by September 2008.[626]

1254. The beleaguered health sector was subjected to severe strain when the military operations started on 28 December. Hospitals and health centres of the Ministry of Health worked on an emergency basis under extremely difficult conditions and with limited resources. They nevertheless responded effectively to the crisis. Urgent medical interventions to treat critical injuries were performed under severe circumstances. Of the 5,380 injured people reported by the Ministry, 40 per cent were admitted to the main hospitals, but because of the policy of discharging patients as soon as feasible to free up beds and staff, there were concerns that some injuries (e.g. burns and acute surgical conditions) might have led to complications as follow-up care may have been inadequate. Some injuries will result in permanent disability (see also section G below).

1255. Medical facilities and personnel were targeted during the fighting. Seventeen health personnel were killed and 26 injured. In total, 29 ambulances were damaged or destroyed by bombs or crushed by armoured vehicles, while 48 per cent of Gaza's 122 health facilities were either directly or indirectly hit by shelling. Medical relief and rescue were in many cases also intentionally hindered.

1256. OCHA reported that medical supplies, including drugs and equipment, were allowed into the Gaza Strip in larger quantities during January in the midst of the fighting. However, logistical difficulties and the fact that many medicines had a very short expiration date prevented the health staff from using the increased quantities for the benefit of patients. Finally, the situation of patients with chronic health conditions, such as heart and kidney problems, became a concern because patients with critical life-threatening injuries requiring urgent attention were given priority.[627]

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[626] WHO Report ...: "Gaza humanitarian situation report: the impact..."

1257. The destruction of sewage treatment facilities and pipes together with the lack of purifying materials had consequences for public health. Thousands of litres of untreated sewage dumped in fields or in the sea created a potential health hazard. The Mission received information about recent epidemiological tests of water samples. The samples had been collected from all water networks and wells, especially from areas targeted during the military operations, to investigate the presence of microbiological pollutants. Information on water-related diarrhoea among children under age 3 attending UNRWA facilities was collected weekly in January and February 2009. The analyses showed an increase of 18 per cent between 19 January and 8 February. Moreover, 14 per cent of the water samples collected in February were polluted with microbiological pollutants. The increase in diarrhoeal disease was also confirmed to have occurred in the areas where the water had been contaminated.[628]

1258. WHO also cited the preliminary results from UNEP initial sampling in Gaza, which showed that "much of the rubble is contaminated with asbestos; damage to the waste treatment system had contaminated the aquifer; the health waste handling system had completely broken down, with such waste going into domestic waste. The results on heavy metal contamination are so far inconclusive."[629] The Mission also investigated and confirmed allegations about the use of weapons whose potential long-term impact on individual victims' health raises concern. They include allegations of the use of weapons containing chemical pollutants such as tungsten and white phosphorus (see also chapter XII).[630]

1259. Conditions under Israeli occupation prior to 2005, together with poverty and the difficulties caused by the blockade, had already made a deep impact on the mental health of the local population. The three weeks of intense bombardment and military ground action added new, serious psychological traumas, especially noticeable in children. According to Dr. Iyad al Sarraj of the Gaza Community Mental Health Programme, over 20 per cent of Palestinian children in Gaza suffer from post-traumatic stress disorders, the symptoms of which "will appear over the days, months, years, or decades to come".[631]

1260. One particular characteristic of the conflict, namely that the population could not flee the conflict areas as can be done in many conflicts, and had no shelters or safe places in which to hide or protect themselves, reinforced feelings of being trapped, defenceless and vulnerable to more attacks with a sense of inevitability.[632] Many of those who met the Mission stated that they felt terrorized.

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[627] The Humanitarian Monitor, No. 33.

[628] WHO, "Quality of water in the Gaza Strip", March 2009.

[629] WHO Report, p. 29.

[630] Report of the Mission by Physicians for Human Rights-Israel, p. 75-76.

[631] Public hearing, Gaza, 29 June 2009.

[632] WHO report, p. 12.

1261. According to Dr. Ahmad Abu Tawahina, psychosomatic disorders have a particularly serious impact on Palestinian society, where social stigma is often associated with mental suffering. In general, this makes it difficult for people to express psychological problems. This condition is frequently experienced in the form of recurrent psychosomatic symptoms, such as migraines, pains in joints and muscles, general fatigue and the inability to do even normal daily activities. Most of these patients are referred not to mental health practitioners, but to general physicians, who prescribe drugs to alleviate the symptoms and not the causes. This in turn has given rise to a serious problem of drug dependency.[633]

1262. The sense of security that comes from living in a supportive and safe environment had already been eroded over the years by constant attacks and military confrontation, but was further undermined by the direct experience and/or witnessing of violence against relatives. The widespread destruction, the displacement, the inability to find a safe place anywhere, together with the direct exposure to life-threatening events will continue to have a serious impact on the population. The general state of the inhabitants of the Gaza Strip was described as a form of alienation.[634]

1263. Many of the mental health problems are the result of years of conflict, living in poverty, scarcity and instability in the area and will probably continue until the root causes are eliminated. People, in particular children, live or grow up in a society under occupation, with constant episodes of violence and no sense of security or normalcy.

1264. The situation is compounded by the relative scarcity of qualified professionals and inadequate facilities. The Gaza Community Mental Health Programme has only about 40 members of staff specialized in mental health, including physicians, social researchers, nurses, as well as psychologists. According to Dr. al-Sarraj, this number is not sufficient to cover even the needs of Gaza City district, whereas for the entire population of the Gaza Strip a team of 300 specialists would be necessary.[635]

1265. Over the past two decades, the Gaza Community Mental Health Programme and others have worked to build resilience in people. They told the Mission that the recent military operations had wiped out their achievements. People suffering severe loss also detach themselves from reality, in a phenomenon called "numbness". According to Dr. Tawahina, the general feeling among most people in Gaza is that they have been completely abandoned by the international community. This feeling of abandonment in turn increases their frustration, creating additional pain, and leads eventually to more violence and extremism. The Gaza Community Mental Health Programme studied children's attitudes towards violence and found that, as a result of this situation, and especially when children had lost their parents and with them the associated protection and sense of security, they tended to look at "martyrs" and members of armed groups as adult role models instead.[636]

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[633] Dr. Ahmad Abu Tawahina, Gaza Community Mental Health Programme, public hearing, Gaza, 29 June 2009, available at: http://www.un.org/webcast/unhrc/archive.asp?go=090629.

[634] Ibid.

[635] Dr. Iyad al-Sarraj, public hearing, Gaza, 29 June 2009, available at: http://www.un.org/webcast/unhrc/archive.asp?go=090629.

1266. A study conducted by the United Nations Development Fund for Women (UNIFEM) revealed that men also showed more symptoms of psychological trauma after the December-January military operations. Based on specialists' reports, the Mission is of the view that this could in part be due to the additional stress that men face as heads of families in a male-dominated society when they are unable to fulfil their role as main breadwinners or to provide protection and security to their children, wives and other family members.[637]

1267. Based on previous experiences with emergencies, WHO expects the number of people with serious mental health disorders to increase by an average of 1 per cent above the baseline and with mild to moderate disorders by 5 to 10 per cent "provided that a protective environment is restored".[638]

G. Education

1268. The Mission received information about the state of the education sector in the Gaza Strip. UNRWA operates one of the largest school systems in the Middle East and has been the main provider of basic education to Palestine refugees for nearly five decades. The Mission was greatly impressed by its activities and achievements. UNRWA runs 221 schools, while the Government runs 383. UNRWA schools are also a vehicle for health-monitoring and food/nutritional programmes. That Palestinians have high levels of education is largely the result of that work. By the same token, the Mission was shocked to learn how badly educational facilities and activities in the Gaza Strip have been affected as a result of the blockade and the recent military operations.

1269. Information and testimonies received by the Mission showed that the education system was affected in several ways by the restrictions imposed by the blockade. The lack of construction materials had halted all new construction. Repairs to the educational infrastructure also had to be postponed. Around 88 per cent of UNRWA schools and 82 per cent of Government schools operated on a shift system to cope with the demand. The lack of educational material and equipment hampered the ability to maintain teaching standards. This situation was causing a decline in attendance and performance at governmental schools.[639]

1270. The ban on the movement of people through the crossings affected not only university students planning to study or already undertaking studies abroad, but also the possibilities for academics and scholars to travel abroad on academic exchanges. Between July and September 2008 only 70 students managed to leave the Gaza Strip via Erez but hundreds saw their aspirations to study abroad truncated.

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[636] Meeting of the Mission with the Gaza Community Mental Health Programme, 4 June 2009.

[637] United Nations, Voicing the Needs of Women and Men in Gaza, 2009, p. 32.

[638] WHO report, p. 13.

[639] UNRWA and the Association of International Development Agencies (AIDA), "The Gaza blockade: Children and education fact sheet".

1271. The military operations destroyed or damaged at least 280 schools and kindergartens. Six of them were located in northern Gaza, affecting some 9,000 pupils, who had to be relocated. According to the Ministry of Education and Higher Education, 164 pupils and 12 teachers were killed during the military operations. Another 454 pupils and five teachers were injured. At UNRWA schools, 86 children and three teachers were killed, and 402 children and 14 teachers injured. During the military operations, 44 UNRWA schools were used as emergency shelters to cope with the more than 50,000 displaced individuals.

1272. Schools were generally closed for the duration of the hostilities, disrupting the study programme. After the ceasefire it was unclear how many students and teachers returned to schools but that number was reported to reach up to 90 per cent in UNRWA schools.[640] Children and teachers reported situations of anxiety and trauma as a result of the extreme violence to which they had been exposed and the loss of relatives or friends. The Mission heard that the start of the military operations with air strikes at a time when schools were functioning exposed children to a heightened risk and filled them with fear and panic. Schools and the roads towards them occasionally remained unsafe because of the presence of explosive remnants of war. Two Palestinian children were killed by those explosives in Zeytoun shortly after the ceasefire was declared. The Mission heard reports that some children were injured by white phosphorus on their way to school.

1273. The Mission saw the destruction caused to the American School. It also saw the destruction caused at the Islamic University and in other university buildings that were destroyed or damaged. These were civilian, educational buildings and the Mission did not find any information about their use as a military facility or their contribution to a military effort that might have made them a legitimate target in the eyes of the Israeli armed forces.

1274. The Mission was also informed of indoctrination programmes allegedly introduced by the Gaza authorities, and of a process of ideological and political polarization. Such programmes have a high potential for imposing models of education at odds with human rights values and with a culture of peace and tolerance. In this regard, the Mission believes that efforts to incorporate human rights in the curricula should be encouraged by the relevant authorities.

H. Impact on women and children

1275. The attention of the Mission was drawn to the particular manner in which children and women had been affected by the blockade policies and the military operations. In its report, WHO took figures from PCHR: out of 1,417 persons killed, 313 were children and 116 women. It also takes figures from the Israeli armed forces that showed that 1,166 were killed, of whom 49 were women and 89 were under 16.[641] Among the 5,380 injured, 1,872 were children and 800 women.[642] The Mission directly investigated many incidents in which women and children had been killed as a result of deliberate or indiscriminate attacks by the Israeli armed forces.[643]

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[640] The Humanitarian Monitor, No. 33.

[641] WHO report, p. 10.

[642] The Palestinian National Early Recovery and Reconstruction Plan….

[643] See chapters VII, X, XI and XIV.

WHO also reported that among the many injured people who crossed the Rafah border and were accepted for medical treatment in Egypt during the second week of the military operations there were 10 children showing a single bullet injury to the head and one with two.

1276. The Mission held interviews with a number of women and representatives of women's organizations and heard the testimony of Mariam Zaqout of the Culture and Free Thought Association.[644] It heard that the blockade and the military operations had aggravated poverty, which particularly affected women, who must find food and other essentials for their families. Women were often the sole breadwinners (for instance, if male family members had died or been injured as a result of conflict or violence, or were imprisoned) but jobs were hard to come by. Over 300 women had been widowed as a result of the military operations and had become dependent on food and income assistance. In addition, women bore a greater social burden, having to deal with daily life made harsher by the crisis and, at the same time, provide security and care for injured family members and children, their own and others who have lost their parents. These responsibilities sometimes compelled them to conceal their own sufferings, so their concerns remained unaddressed.

1277. In the same interviews, the participants stated that women were particularly affected by the destruction of homes and the invasion of privacy. Having to live in tents without privacy or appropriate sanitary facilities added to their hardship. Moreover, the military operations had strained relations among family members. Psychological pressures on men and women, together with financial difficulties, led to family disputes, family violence and divorce. There were frequent disputes between widows and their in-laws regarding child custody and inheritance. Widows were also under increased pressure to get married again to be able to sustain themselves. Consequently, there was an increase in women seeking legal aid, as legal problems tended to become aggravated because of shortcomings in the law and fewer safeguards for the rights of women.[645]

1278. The particular manner in which the conflict affected women was dramatically illustrated for the Mission by the testimony of a woman of the al-Samouni family (see chap. XI). She had three children and was pregnant when her family and her house came under attack. She commented on how the children were scared and crying. She was distressed when recounting how her 10-month-old baby, whom she was carrying in her arms, was hungry but she did not have anything to give him to eat, and how she tried to feed him by chewing on a piece of bread, the only food available, and giving it to him. She also managed to get half a cup of water from an ill functioning tap. There were other babies and older children. She and her sister exposed themselves to danger by going out to search for food for them. Her husband, mother and sister were killed but she managed to survive. Her other son was wounded in the back, and she carried both out of the house.[646]

1279. Many women felt helpless and embarrassed at not being able to protect and care for their children. Others felt frustrated, invaded in their personal space and powerless when their houses and possessions were destroyed or vandalized. Those feelings contributed to their psychological suffering.[647]

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[644] Public hearings, Gaza, 29 June 2009.

[645] Meeting with women's organizations, 3 June 2009.

[646] Mission interview with Mrs. Massouda Sobhia al-Samouni, Gaza, 3 June 2009.

1280. A UNFPA study conducted immediately after the December-January military operations reported a 40 per cent increase in miscarriages admitted to maternity wards, a 50 per cent increase in neonatal deaths, a rise in obstetric complications and anecdotal evidence of deaths or health complications because pregnant women were unable to reach hospital to deliver their babies.[648] Women interviewed in the context of another UNFPA study expressed extreme fears for themselves and their loved ones. Associated symptoms included anxiety, panic attacks, feelings of insecurity, disturbed sleep and eating patterns, depression, sadness and fear of sudden death.[649]

1281. Adults and children showed signs of profound depression, while children suffered from insomnia and bed-wetting. Numerous testimonies received by the Mission highlight the presence of children in situations where houses were searched or occupied with force by Israeli soldiers, and when killings occurred.[650] The Mission heard the testimony of a mother whose children, aged 3 to 16, had witnessed the killing of their father in their own house. With Israeli soldiers forcefully questioning their mother and uncle and vandalizing their house, the children asked their mother whether they would be killed as well. Their mother felt the only comfort she could give them was to tell them to say the *Shehada*, the prayer recited in the face of death.[651] Children were present in improvised shelters on United Nations premises, enduring the trauma of displacement as well as feelings of fear from the military attacks and of deep insecurity from having been attacked in their own homes or in a shelter that was expected to be safe. During its visits, the Mission saw many children living with their families in the ruins of their homes and in makeshift accommodation. The trauma for children having witnessed violence and often the killing of their own family members will no doubt be long-lasting. Mrs. Massouda Sobhia al-Samouni told the Mission that her son was still traumatized. He kept placing coins in his mouth and when she told him it was dangerous and he might die if he did so, he replied that he wanted to join his father.

1282. Some 30 per cent of children screened at UNRWA schools had mental health problems, while some 10 per cent of children had lost relatives or friends or lost their homes and possessions. WHO estimated that some 30,000 children would need continued psychological support and warned of the potential for many to grow up with aggressive attitudes and hatred.[652]

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[647] Culture and Free Thought Association and UNFPA, "Gaza crisis: Psychosocial consequences for women, youth and men", executive summary, 27 April 2009, p. 3.

[648] UNFPA, "Gaza crisis: impact on reproductive health, especially maternal and newborn health and obstetric care", draft report, 10 February 2009.

[649] Culture and Free Thought Association, "Gaza crisis: Psycho-social consequences for women", executive summary, 8 February 2009.

[650] See, for example, chapters X and XI. See also the testimony of Mrs. Abir Hajji at the public hearing, Gaza, 6 June 2009, recounting the killing of her husband in the presence of her children.

[651] Mission interview with Mrs. Abir Hajji, Gaza, 3 June 2009. Mrs. Hajji also participated in the public hearings, Gaza, 28–29 June 2009.

I. Persons with disabilities

1283. Information provided to the Mission showed that many of those who were injured during the Israeli military operations sustained permanent disabilities owing to the severity of their injuries and/or the lack of adequate and timely medical attention and rehabilitation. Gaza hospitals reportedly had to discharge patients too early so as to handle incoming emergencies. Other cases resulted in amputations or disfigurement. About 30 per cent of patients were expected to have long-term disabilities.[653]

1284. WHO reported that by mid-April 2009 the number of people with different types of permanent disability (e.g. brain injuries, amputations, spinal injuries, hearing deficiencies, mental health problems) as a result of the military operations was not yet known. It reported speculations that there might be some 1000 amputees; but information provided by the WHO office in Gaza and based on estimates by Handicap International indicated that around 200 persons underwent amputations.[654]

1285. While the exact number of people who will suffer permanent disabilities is still unknown, the Mission understands that many persons who sustained traumatic injuries during the conflict still face the risk of permanent disability owing to complications and inadequate follow-up and physical rehabilitation.[655]

1286. The Mission also heard moving accounts of families with disabled relatives whose disability had slowed their evacuation from a dangerous area or who lived with a constant fear that, in an emergency, their families would have to leave them behind because it would be too difficult to evacuate them.

1287. One testimony concerned a person whose electric wheelchair was lost after his house was targeted and destroyed. Since the residents were given very short notice of the impending attack, the wheelchair could not be salvaged and the person had to be taken to safety on a plastic chair carried by four people.

1288. The Mission also heard a testimony concerning a pregnant woman who was instructed by an Israeli soldier to evacuate her home with her children, but to leave behind a mentally disabled child, which she refused to do.

1289. Even in the relative safety of shelters, people with disabilities continued to be exposed to additional hardship, as these shelters were not equipped for their special needs. The Mission heard of the case of a person with a hearing disability who was sheltering in an UNRWA school, but was unable to communicate in sign language or understand what was happening and experienced sheer fear.

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[652] WHO report, p. 13.

[653] The Humanitarian Monitor, No. 33.

[654] WHO report, p. 11; Gaza Situation Report Feb - May 2009, WHO Gaza, provided to the Mission.

[655] Gaza Situation report.

1290. Frequent disruptions in the power supply had a severe impact on the medical equipment needed by many people with disabilities. People using wheelchairs had to face additional hurdles when streets started piling up with the rubble from destroyed buildings and infrastructure.

1291. In addition, programmes for people with disabilities had to be closed down during the military operations and rehabilitation services stopped (for instance, organizations providing assistance were unable to access stocks of wheelchairs and other aids). Many social, educational, medical and psychological programmes have not yet fully resumed.[656]

J. Impact on humanitarian assistance provided by the United Nations

1292. The tightening of the blockade during the two months before the military operations entailed additional restrictions also for United Nations programmes and activities, in particular those of UNRWA, WFP and others that provide food and other forms of support. The Mission was informed that, as a result of the blockade and the Israeli limitations on the delivery of humanitarian assistance, the capacity of UNRWA to mitigate the effects of the military operations on the civilian population was reduced.[657] As stated above, just days before the Israeli military operations started, UNRWA had to suspend its food assistance programmes and scale down other programmes.

1293. But the impact of the blockade also extended to several humanitarian projects that had been planned or were in progress and had to be stopped and postponed. Most of them were in health, sanitation, water and education.

1294. During the military operations, UNRWA workers and trucks were also hit, resulting in deaths and injuries. The Board of Inquiry established by the United Nations Secretary-General investigated a number of incidents in which United Nations facilities were targeted and issued a report determining responsibilities.[658] The Mission is of the view that the factual findings made by the Board of Inquiry entail legal liability for those responsible (see below).

1295. The Mission learned that seven UNRWA staff members (none of them on duty), five job creation programme contractors (one on duty) and three contractors were killed; 21 other contractors were injured. In all, 57 UNRWA buildings were damaged by shelling or airstrikes, including 36 schools (six serving as emergency shelters), seven health centres, three sanitation offices, two warehouses and five other buildings.

1296. Thirty-five UNRWA vehicles, including three armoured vehicles, were damaged. From its remaining 321 vehicles, only 286 are operational and 7 are damaged beyond repair.

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[656] Meeting of the Mission with the Society for Disabled in the Gaza Strip, 30 June 2009.

[657] Meeting of the Mission with UNRWA, 1 June 2009.

[658] See Summary of the Report of the United Nations Headquarters Board of Inquiry.

1297. UNRWA informed the Mission that between 27 December and 19 January, 536 UNRWA trucks entered the Gaza Strip through the Kerem Shalom border crossing. By 21 January, 394 trucks had entered through Karni and 2089 through Kerem Shalom (including private, humanitarian and UNRWA trucks). UNRWA considered these amounts to be insufficient to meet the humanitarian needs of the population of the Gaza Strip.[659]

1298. The Israeli Government stated that "from the commencement of the Gaza Operation and for its duration" a total of 1,511 trucks with supplies from Israel as well as diesel, cooking gas and other fuel were allowed into the Gaza Strip. It would appear that some 60 per cent of these supplies were foodstuffs. The Israeli Government states that (presumably during the same period) it also coordinated the passage of 706 trucks carrying donations from international organizations and various countries.[660] Information from UNRWA suggests that these quantities were irrelevant given the situation prevailing during the military operation and the local needs. For instance, although fuel for the power plant was let in, it was inadequate, forcing the power plant to shut down and causing 16-hour power cuts in some areas. Israel also reported allowing in 2,277,000 litres of diesel during the military operations, but according to UNRWA records only 199,400 litres were allowed in, while OCHA records suggest only 92,000 litres were allowed in, compared to 6,628,400 litres in January 2007.[661]

1299. The Israeli Government also provided information about medical supplies that were brought into the Gaza Strip, but the figures are imprecise or incomplete as it was unclear what unit of measure was being used. In addition, many of the agencies listed were not actually bringing in medical supplies. For instance, its report lists that WFP brought in "3,611" medical supplies, but information made available to the Mission indicated that WFP was bringing in only flour and hygiene kits.

K. Legal analysis

1300. Obligations under international humanitarian law are relevant for the assessment of the facts described above. As mentioned earlier, the Fourth Geneva Convention as well as provisions of Additional Protocol I reflecting customary international law apply to the actions of Israel in the Occupied Palestinian Territory before and during the military operations. The protections owed under international humanitarian law to the civilian population of the Gaza Strip by all parties to the conflict include the duty to allow the free passage of humanitarian medical supplies, as well as consignments of essential foodstuffs and clothing for children, pregnant women and mothers at the earliest opportunity (article 23 of the Fourth Geneva Convention). Article 70 of Additional Protocol I provides that parties to a conflict are obliged to allow the passage of articles that are essential for the civilian population, at the earliest opportunity and without delay.

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[659] By 1 February UNRWA was providing food assistance to 900,000 registered Palestine refugees, 504,000 of them children, in the Gaza Strip. There are 1,048,125 refugees in the Gaza Strip (74 per cent of the population), see UNRWA, "Fact sheet: Consequences of the conflict in the Gaza Strip 27 December 2008- 18 January 2009".

[660] "The operation in Gaza…", para. 271.

[661] OCHA also reported that in January 2009 no imports of petrol to Gaza were registered, compared to 1,522,250 litres in January 2007; 915,310 kilograms of cooking gas was imported in January 2009, compared to 5,238,030 in January 2007; and 3,760,400 litres of industrial diesel, compared to 8,370,290 in January 2007.

1301. The relevant provisions of the Fourth Geneva Convention relating to the duties of an occupying Power should also be taken into consideration, in particular the obligations contained in articles 50 (duty to facilitate the working of care and education institutions), 55 (duty to ensure food and medical supplies to the population), 56 (duty to ensure and maintain medical and hospital establishments and services), 59 (duty to agree on relief schemes if the occupied territory is not well supplied) and 60 (duty to continue performing obligations even if third parties provide relief consignments). Several provisions of Additional Protocol I reflecting customary international law are also relevant here, including articles 51 and 52, which prohibit attacks on civilians and on civilian objects, and article 54, which prohibits the destruction of objects indispensable to the survival of the civilian population.

1302. Access to adequate food, shelter and clothing, as part of an adequate standard of living, are human rights recognized in article 11 of the International Covenant on Economic, Social and Cultural Rights. The same instrument recognizes the rights to education and to the highest attainable standard of physical and mental health (art. 12). The content of these rights and the corresponding State duties has been clarified by the United Nations Committee on Economic, Social and Cultural Rights. The Convention on the Rights of the Child protects the child's right to life, survival and development (art. 6) and to be protected from all forms of mental or physical violence (art. 19), to the highest standard of health (art. 24), to an adequate standard of living (art. 27) and to education (arts. 28 and 29). Although these instruments protect women and men, girls and boys alike, the Convention on the Elimination of All Forms of Discrimination against Women adds more specification and scope to those obligations with regard to women. All these human rights obligations are applicable to Israel with respect to its actions in the Gaza Strip since they apply also in situations of armed conflict.

1303. Some rights contained in the International Covenant on Economic, Social and Cultural Rights are subject to progressive realization. This means that they can be achieved only over time. States have an obligation to move as expeditiously and effectively as possible towards that goal. Deliberate retrogressive measures are permitted only under stringent conditions.[662]

1304. The Mission recalls in this regard its analysis of the Israeli objectives and strategies during the military operations in chapter XVI. There the Mission referred to statements made by Deputy Prime Minister Eli Yishai on 6 January 2009: "It [should be] possible to destroy Gaza, so they will understand not to mess with us". He added that "it is a great opportunity to demolish thousands of houses of all the terrorists, so they will think twice before they launch rockets". The Mission also referred to the so-called Dahiya doctrine, which requires widespread destruction as a means of deterrence and seems to have been put into practice. These objectives and strategies should be kept in mind with regard to the following analysis.

1305. The Mission considers that the closure of or the restrictions imposed on border crossings by Israel in the immediate period before the military operations subjected the local population to extreme hardship and deprivations that are inconsistent with their protected status. The restrictions on the entry of foodstuffs, medical supplies, agricultural and industrial input, including industrial fuel, together with the restrictions on the use of land near the border and on fishing in the sea have resulted in widespread poverty, increased dependence on food and other assistance, increased unemployment and economic paralysis. The Mission can conclude only that Israel has and continues to violate its obligations as an occupying Power under the Fourth Geneva Convention.

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[662] General comment No. 3 (1990), para 9.

1306. The Mission has given consideration to the argument put forward by the Israeli Government that the above policies and restrictions are being imposed as a form of sanction. However, such blanket sanctions are not permitted under international law. The Committee on Economic, Social and Cultural Rights has addressed economic sanctions and their effects on the enjoyment of economic and social rights, and held:

> […] whatever the circumstances, such sanctions should always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights [and]
>
> […] it is essential to distinguish between the basic objective of applying political and economic pressure upon the governing elite of the country to persuade them to conform to international law, and the collateral infliction of suffering upon the most vulnerable groups within the targeted country.[663]

1307. In respect to the right to water, the Committee stated: "States parties should refrain at all times from imposing embargoes or similar measures that prevent the supply of water, as well as goods and services essential for securing the right to water." Similar considerations apply to food and health services and goods.[664]

1308. The Mission also notes that reprisals and collective penalties are prohibited under international humanitarian law.

1309. The Mission has considered the question of military security. As serious as the situation that arises when rockets and mortars are fired on or near border crossings may be, the Mission considers that it does not justify a policy of collective punishment of the civilian population of the Gaza Strip. The Mission is aware of the Government of Israel's declaration of the Gaza Strip as a "hostile territory". Again, for the Mission, such a declaration does not relieve Israel of its obligations towards the civilian population of the Gaza Strip under international humanitarian law.

1310. Moreover, the Mission takes note that following the decision of the Supreme Court of Israel in what is known as the *Fuel and electricity* case,[665] Israel reconsidered its obligations relating to the amounts and types of humanitarian supplies that it allowed into the Gaza Strip to meet "vital humanitarian needs". Whatever that somewhat vague standard may be, the Mission stresses that Israel is bound to ensure supplies to meet the humanitarian needs of the population, to the fullest extent possible.

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[663] General comment No. 8 (1997), paras. 4 and 16.

[664] General comments No. 15 (2002) and No. 12 (1999), para. 8.

[665] Gaber et al. v. The Prime Minister, case No. 9132/07.

1311. In sum, the Mission restates its view that Israel has not fulfilled its duties as an occupying Power in relation to the Gaza Strip.

1312. Again, reference is made to the blockade and Israel's obligation to respect, protect, facilitate or provide, to the extent possible, for the enjoyment of the whole range of economic, social and cultural rights in the Gaza Strip. At the very least, Israel is "under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".[666] Israel's actions have led to a severe deterioration and regression in the levels of realization of those rights. Consequently, the Mission finds that Israel has failed to comply with those obligations.

1313. The Mission has also given consideration to the extent and type of military operations conducted by Israel in the Gaza Strip between 27 December 2008 and 18 January 2009. As mentioned earlier, provisions of the Fourth Geneva Convention and of Additional Protocol I that reflect international customary law apply to those operations. Their obligations include that under the Fourth Geneva Convention to give particular protection and respect to the infirm and expectant mothers (art. 16), to respect and protect civilian hospitals and medical personnel (arts. 18 and 20), and to allow the free passage of all consignments of medical and hospital objects, food and clothing subject to certain conditions (art. 23). The Mission will address here only respect for the provisions contained in article 23, which it considers to be part of customary international law. With regard to Additional Protocol I, the Mission will address here Israel's compliance with article 54.

1314. The Government of Israel has provided information about the actions it took to ensure the supply of humanitarian assistance to the Gaza Strip and to ensure that medical relief and rescue as well as essential facilities would function during the hostilities. These actions allegedly comprised: the continuous supply of humanitarian aid through the crossings; coordination of evacuation within the Gaza Strip and outside; a unilateral suspension of military operations each day to enable the resupply of assistance for the population and actions to ensure the functioning of essential infrastructure in the Gaza Strip. To this end, the Government of Israel reported that it established a number of coordinating and liaison bodies with Palestinian authorities and organizations, the United Nations agencies on the ground and humanitarian agencies, such as ICRC. The Government also reported that a number of trucks carrying humanitarian goods from Israel and from other countries, including from international organizations, were given passage.

1315. In response, the Mission draws attention to the fact that no consideration was given to the situation that prevailed in the Gaza Strip before the military operations. In particular, the Mission notes that the amounts and types of food, medical and hospital items and clothing were wholly insufficient to meet the humanitarian needs of the population. Given that since the end of the operations the number of truckloads allowed through the crossings has again fallen, the humanitarian supplies are even less sufficient.

1316. At the height of the military operations, several NGOs appealed to the Government of Israel to ensure a sufficient supply of electricity and fuel to the Gaza Strip to allow for the functioning of vital services.[667] At the same time, two petitions were filed with the Supreme Court of Israel on 7 and 9 of January, respectively, to order the Government to ensure that the Israeli armed forces did not attack ambulances and medical personnel and that sufficient electricity and fuel were supplied to enable hospitals, water and sanitation systems to function during the conflict. On 19 January, as military operations ended, the Supreme Court ruled denying both petitions.[668]

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[666] Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004, para. 112.

1317. The Government of Israel seems to see the hardship and suffering of Palestinians as an inevitable consequence of a situation of war. The Government's statement that "civilian populations inevitably and tragically suffer during a time of armed combat, particularly where the combat operations take place in densely populated urban areas"[669] may be correct, but this does not relieve Israel from its obligations under international humanitarian law.

1318. From the facts it ascertained and the foregoing analysis, the Mission finds that Israel has violated its obligation to allow the free passage of all consignments of medical and hospital stores and objects, food and clothing (article 23 of the Fourth Geneva Convention).

1319. Article 54 of Additional Protocol I contains the prohibition:

> to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas…, drinking water installations and supplies and irrigation works for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive […].

The Mission regards this rule as reflective of international customary law. In this context, Israel's obligations to respect, protect and facilitate or provide for the realization of economic, social and cultural rights, and its obligations under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women are also relevant, and have been undermined by the blockade and restrictions on the Gaza Strip, as well as the actions taken during the military operations.

1320. With regard to article 54 (2) of Additional Protocol I, the Mission recalls its analysis included in chapter XIII on the destruction of buildings, food production and industry. From the facts ascertained and the circumstances described in the present chapter and in chapters XIII and XVI, the Mission concludes that in the destruction or damaging of greenhouses, agricultural land, water wells for irrigation and irrigation networks there was the specific purpose of denying their use for the sustenance of the civilian population of the Gaza Strip. Furthermore, this appears to be done as part of a policy of collective punishment of the civilian population as elaborated below.

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[667] An excerpt from the Hebrew appeal is available in an English press release at: http://www.gisha.org/UserFiles/File/Press%20Materials/HR%20groups%20-%20resumption%20of%20gaza%20fuel%20supplies%201-1-09%20-%20online%20version.pdf

[668] Physicians for Human Rights et. al. v. The Prime Minister et. al., case No. 201/09, and Gisha Legal Centre for Freedom of Movement et al. v. Minister of Defense, case No. 248/09, Judgement of 19 January 2009, para. 26, available at http://elyon1.court.gov.il/files_eng/09/010/002/n07/09002010.n07.pdf

[669] "The operation in Gaza…", para. 277.

1321. With respect to the right to water, the Committee on Economic, Social and Cultural Rights stated:

> The obligation to *respect* [the right to water] requires that States parties refrain from […] limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.[670]

1322. This language is similar to that of a resolution adopted by consensus at the 26th International Conference of the Red Cross and Red Crescent that calls upon parties to a conflict to "take all feasible measures to avoid in their military operations, all acts liable to destroy or damage water sources."[671]

1323. Similar considerations apply to the right to adequate housing.[672] The widespread destruction of residential housing, water wells and pipe networks cannot be seen as an inevitable or necessary incidence of military hostilities. Israel had a duty to distinguish between civilian and military objects and not to direct any attacks at civilians or civilian objects. The Mission has not received any information suggesting that all the houses destroyed served as hideouts for Hamas fighters or were booby-trapped and does not accept that this was the case. The patterns of destruction described in the present chapter and in others reveal that many houses were fired at or demolished after their occupants had been ordered to leave them. There was then no clear necessity for Israeli soldiers to occupy such properties or to destroy them. They were in effective control of the area. In other cases, houses were demolished with bulldozers during the last few days of the military operations when, again, Israeli forces were in total control of the areas in which the houses were located. Military necessity and the need to prevent rockets being fired from the houses into Israel do not seem to the Mission plausible reasons for this widespread destruction. These considerations apply equally to the destruction of agricultural land and greenhouses, which are so important for local food security.

1324. From the facts available to it and by virtue of the foregoing considerations, the Mission believes that the destruction of private residential houses, water wells, water tanks, agricultural land and greenhouses violates Israel's duties to respect the right of the people in the Gaza Strip to an adequate standard of living (including food, housing and water).

1325. The Mission is aware of the statement of the Committee on the Rights of the Child that many of the fundamental rights of the child "have been blatantly violated during this crisis".[673] On the basis of this finding and on the facts as described above, the Mission also considers that

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[670] General comment No. 15 (2002), para. 21.

[671] *Customary International Humanitarian Law…*, p. 150.

[672] Submission to the Mission made by COHRE.

[673] Committee on the Rights of the Child, "Effects of the Gaza conflict on children 'devastating'", statement, 12 January 2009.

Israel has violated its obligations under the Convention on the Rights of the Child during its military operations in the Gaza Strip and in particular of article 24 (1), stipulating that "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health-care services"; article 38 (1), stipulating that "States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child"; and article 38 (4), stipulating that "States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict".

1326. The Mission also notes that Israel is in continuing violation of article 39 of the Convention in that, by actively preventing reconstruction efforts, it does not fulfil its obligations to "take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: […] armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child".

1327. The Mission is also aware of the statement made by the Committee on the Elimination of All Forms of Discrimination against Women that "the human rights of women and children in Gaza, in particular to peace and security, free movement, livelihood and health, have been seriously violated during this military engagement."[674] It concurs with this statement. The Mission also notes that the Convention on the Rights of Persons with Disabilities, article 11, requires States parties to take "all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict". Israel has signed, but not yet ratified, this Convention and is thus under an obligation not to defeat its object and purpose.

1328. The Mission also considered whether the Gaza population was subject to collective punishment or penalty. According to article 33 of the Fourth Geneva Convention, "collective penalties and likewise all measures of intimidation or of terrorism are prohibited". Article 75 (2) (d) of Additional Protocol I includes collective punishment as an act that is "prohibited at any time and in any place whatsoever". Reprisals against protected persons are also prohibited under article 33. These prohibitions are part of customary international law.[675]

1329. The Mission notes that the scope of collective penalties goes beyond physical or criminal sanctions to encompass also "sanctions and harassment of any sort, administrative, by police action or otherwise".[676] The cumulative effect of the blockade policies, with the consequent hardship and deprivation among the whole population, and of the military operations coupled with statements by Israel made to the effect that the whole of the Gaza Strip was a "hostile territory" strongly suggest that there was an intent to subject the Gaza population to conditions such that they would be induced into withdrawing their support from Hamas. This was apparently confirmed by the then Minister of Foreign Affairs of Israel commenting on the decision by the Supreme Court to uphold the fuel cuts: "The Palestinians need to understand that business is not usual, I mean there is no equation in which Israeli children will be under attacks by Kassam rockets on a daily basis and life in the Gaza Strip can be as usual".[677]

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[674] United Nations, UN committee says women's rights were seriously violated during Gaza conflict, press release, 6 February 2009.

[675] See *Customary International Humanitarian Law…*, p. 374.

[676] ICRC Commentary to Additional Protocol I, p. 3055.

1330. The above statements should also be seen in the light of what the Mission has identified as the objectives and strategies of Israel before and during the operations (see chap. XVI). Israel, rather than fighting the Palestinian armed groups operating in Gaza in a targeted way, has chosen to punish the whole Gaza Strip and the population in it with economic, political and military sanctions. This has been seen and felt by many people with whom the Mission spoke as a form of collective punishment inflicted on the Palestinians because of their political choices.

1331. The facts ascertained by the Mission, the conditions resulting from the deliberate actions of the Israeli armed forces and the declared policies of the Israeli Government – as they were presented by its authorized representatives – with regard to the Gaza Strip before, during and after the military operation, cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip. The Mission, therefore, finds a violation of the provisions of article 33 of the Fourth Geneva Convention.

1332. The Mission has also considered the question of whether the crime of persecution as a form of crime against humanity had been committed against the civilian population of the Gaza Strip. To establish that a crime against humanity was committed it would have to be established that there was a widespread or systematic attack on a civilian population that blatantly discriminated and infringed a fundamental right recognized under international customary law or treaty, and was carried out deliberately with the intention so to discriminate.[678]

> The crime of persecution encompasses a variety of acts, including, inter alia, those of physical, economic or judicial nature, that violate an individual's right to the equal enjoyment of his basic rights.[679]

1333. In *Prosecutor* v. *Kupreskic* judgement, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia describes the types of acts that would constitute the crime of persecution in the following terms:

> […]
>
> (c) Persecution can also involve a variety of other discriminatory acts, involving attacks on political, social, and economic rights. […]

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[677] *Global Security*, "Israel's Supreme Court upholds fuel cuts to Gaza", 30 November 2007, available at http://www.globalsecurity.org/military/library/news/2007/11/mil-071130-voa02.htm. The issue is also addressed in the submission to the Mission by Diakonia.

[678] *Prosecutor* v. *Kunarac et al.*, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, case No. IT-96-23-T and No. IT-96-23/1-T, Judgement of 22 February 2001, para. 431.

[679] *Prosecutor* v. *Tadić*, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, case No. IT-94-1-T, Judgement of 7 May 1997, para. 710.

> (d) Persecution is commonly used to describe a series of acts rather than a single act. Acts of persecution will usually form part of a policy or at least of a patterned practice, and must be regarded in their context. […]
>
> (e) […] discriminatory acts charged as persecution must not be considered in isolation. Some of the acts mentioned above may not, in and of themselves, be so serious as to constitute a crime against humanity. For example, restrictions placed on a particular group to curtail their rights to participate in particular aspects of social life (such as visits to public parks, theatres or libraries) constitute discrimination, which is in itself a reprehensible act; however, they may not in and of themselves amount to persecution. These acts must not be considered in isolation but examined in their context and weighed for their cumulative effect.[680]

1334. The Mission has described above a series of acts that deprive Palestinians in the Gaza Strip from their means of subsistence, employment, housing and water. Palestinians are further denied freedom of movement and their right to leave and enter their own country. Later the report will address the extent to which Palestinian rights to access a court of law and an effective remedy are limited or denied by Israeli laws (see chap. XXVII)

1335. From the facts available to it, the Mission is of the view that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed.

XVIII. THE CONTINUING DETENTION OF ISRAELI SOLDIER GILAD SHALIT

1336. The Mission notes the continued detention of Gilad Shalit, a member of the Israeli armed forces, captured in 2006 by Palestinian armed groups during a cross-border operation. In reaction to the capture, the Israeli Government ordered a number of incursions to attack important infrastructure in the Gaza Strip as well as Palestinian Authority offices. This was followed by the arrest of eight Palestinian Government ministers and 26 members of the Palestinian Legislative Council by the Israeli security forces (see chap. II).

1337. Israeli Government officials have repeatedly stated that the easing of the blockade on the Gaza Strip (see chaps. V and XVII) is linked to the release of Gilad Shalit. In February 2009, it appeared that the Israeli Government had dropped its demand for Palestinian militants to release Gilad Shalit before it would end the blockade.[681] However, the then Deputy Prime Minister stated shortly after that "Israel is facing a serious humanitarian crisis, and it is called Gilad Shalit, and... until he is returned home, not only will we not allow more cargo to reach the residents of Gaza, we will even diminish it." Israel's then Prime Minister also stated that "we will not reopen the border crossings [into Gaza] and assist Hamas so long as Gilad Shalit is in their brutal prison."[682] According to the CBS News Channel, this position was reiterated by the current Israeli Prime Minister in July 2009.[683]

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[680] *Prosecutor* v. *Kupreškić et al.*, case No. IT-95-16-T, Judgement of 14 January 2000, para. 615.

[681] Agence France Presse quoted by France 24 – "Israel drops Shalit release from truce demands, Hamas claims", 6 February 2009.

1338. In October 2008, a Hamas spokesman stated that "the Shalit case is dependent on prisoners swap... He will never be released if the Israeli occupation does not release Palestinian prisoners whom Hamas wants free…."[684]

1339. The Mission is aware that negotiations, through intermediaries, continue with regard to the exchange of prisoners between the Israeli Government and Hamas representatives.

1340. The Mission asked the Gaza authorities to confirm the status of Gilad Shalit. In their reply, which the Mission considered to be unsatisfactory, the Gaza authorities denied being involved in any way with the capture and detention of Gilad Shalit and stated that they are not in possession of any information regarding his current status.

1341. During its investigations in the Gaza Strip, the Mission heard testimonies indicating that during the military operations of December 2008 – January 2009, Israeli soldiers questioned captured Palestinians about the whereabouts of Gilad Shalit (see chap. XV).

1342. Gilad Shalit's father, Noam Shalit, appeared before the Mission at the public hearing held in Geneva on 6 July 2009.[685] He informed the Mission of his extreme concern about the condition of his son, who has not been able to communicate with his family and has not been allowed to receive ICRC visits. Mr. Shalit expressed concern about the health and psychological status of his son after more than three years of captivity and appealed for his release.

Legal findings and conclusions

1343. The Mission is of the opinion that, as a soldier who belongs to the Israeli armed forces and who was captured during an enemy incursion into Israel, Gilad Shalit meets the requirements for prisoner-of-war status under the Third Geneva Convention. As such, he should be protected, treated humanely and be allowed external communication as appropriate according to that Convention. ICRC should be allowed to visit him without delay. Information about his condition should also be provided promptly to his family.

1344. The Mission is concerned by the declarations referred to above, made by various Israeli officials, who have indicated the intention of maintaining the blockade of the Gaza Strip until the release of Gilad Shalit. The Mission is of the opinion that this would constitute collective punishment of the civilian population of the Gaza Strip.

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[682] Amnesty International, "Detainees used as bargaining chips by both sides in Israel/Gaza conflict", 20 March 2009.

[683] CBS News Channel, "Gaza blockade remains until Shalit freed", 30 July 2009.

[684] "Detainees used as bargaining chips…".

[685] Mission's public hearings: http://www.un.org/webcast/unhrc/archive.asp?go=090706.

SECTION B: INTERNAL VIOLENCE

XIX. INTERNAL VIOLENCE AND TARGETING OF FATAH AFFILIATES BY SECURITY SERVICES UNDER THE CONTROL OF THE GAZA AUTHORITIES

1345. The Mission has received reports and allegations of violations committed in Gaza by the security services in the period under inquiry. It has heard some of those allegations first-hand and investigated them by comparing the accounts it received with reports of domestic and international human rights organizations.

1346. From the beginning of 2006, when Hamas won the majority of seats in the Palestinian Legislative Council, violence between competing Palestinian political groups in the Gaza Strip escalated. Armed clashes periodically erupted between the security forces affiliated with the two main political groups – Fatah and Hamas – and culminated in June 2007, when Hamas seized control of the Palestinian Authority's civil and security institutions of the Gaza Strip.[686]

1347. During the six months preceding the Israeli military operations in Gaza of December 2008-January 2009, reports of deaths in suspicious circumstances and abuses by the security services reporting to the Gaza authorities continued to be documented by domestic monitoring mechanisms, including by the Independent Commission for Human Rights (ICHR).[687]

1348. Between June and December 2008, ICHR received 45 complaints from citizens alleging that they were subjected to torture while being detained or interrogated. All these complaints were lodged against the Ministry of Interior, the police, the military intelligence, the general intelligence and the internal security services of the Gaza authorities, as well as al-Qassam Brigades.

1349. During the same period, ICHR received about 250 complaints from citizens that security agencies (namely the internal security and the police) detained them without respecting legally prescribed procedures. In particular, ICHR reported that no arrest warrants from the competent authorities were presented to detainees and that the security services searched civilian houses without having obtained the relevant search warrants. ICHR reported that family visits to detainees were denied, especially in the al-Saraya and al-Mashtal detention and interrogation centres of the internal security agency. In addition, detainees were not brought before the judicial authorities within the legally prescribed period. According to ICHR, the security services also continued to detain citizens with arrest warrants issued by the military justice authority.

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[686] Non-governmental organizations reported that members of the security forces and armed groups belonging to both groups "committed grave human rights abuses and displayed a flagrant disregard for the safety of the civilian population." "Both sides killed captured rivals and abducted scores of members of rival groups and held them hostage, to be exchanged for friends and relatives held by their rivals." See "Occupied Palestinian Territories torn apart…".

[687] The Independent Commission for Human Rights is an independent Palestinian institution established in 1993 by Presidential Decree with a broad mandate in accordance with national and international norms. This mandate gives it the authority to deal with human rights violations; complaints of abuse of power submitted by citizens; education and promotion; monitoring; and generally integrating human rights into Palestinian legislation and practices. The Mission was impressed by the outstanding work of the institutions in both Gaza and the West Bank. See ICHR, "Monthly reports on violations of HR" (June to December 2008), available at: http://www.ichr.ps/etemplate.php?id=12.

1350. Many leaders of the Fatah movement as well as the Governors of Khan Yunis and Gaza were at the time of drafting this report still in detention at the al-Mashtal detention and interrogation centre.

1351. In the course of its investigations in Gaza, the Mission obtained information from international and domestic organizations and from individuals in Gaza about violence against political opponents by the security services that report to the Gaza authorities. The Israeli attacks, including the aerial strikes targeting police stations and the main prison in Gaza City (see chap. VII), created chaos, making it impossible to independently verify initial reports about violations by the security services. Towards the end of the military operations, however, domestic human rights organizations started to verify such allegations, including by analysing information from hospitals that they had received bodies of persons who had apparently not been killed in the Israeli attacks.

1352. According to both domestic and international human rights organizations, members of the security services and unidentified gunmen killed between 29 and 32 Gaza residents between the beginning of the Israeli military operations and 27 February.[688] Among these, between 17 and 22 detainees, who had been at al-Saraya detention facility on 28 December and had fled following an Israeli aerial attack, were killed in seemingly extrajudicial or summary executions, some of them while seeking medical assistance in hospitals (see chap. VII).

1353. Not all those killed after escaping detention were Fatah affiliates, detained for political reasons, or charged with collaborating with the enemy. Some of the escapees had been convicted of serious crimes, such as drug-dealing or murder, and had been sentenced to death.[689] Regardless of the intended scope of the Israeli attack on the prison, the effect was to create a chaotic situation that, according to some domestic observers,[690] was exploited by some elements in the security services.

1354. During the course of its work in Gaza, the Mission heard first-hand accounts of violations against Fatah affiliates committed during the period of the Israeli military operations. Some of the witnesses who were interviewed by the Mission were severely distressed and asked that their identity not be disclosed for fear of retaliation. The Mission questioned the witnesses and found them to be credible. The following cases are among those reported to the Mission and are based on information it gathered from a variety of sources.

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[688] See Under Cover of War…; ICHR, "Monthly report on human rights and freedoms in the PNA-controlled territory", January 2009, available at: http://www.ichr.ps/pdfs/eMRV-1-09.pdf; PCHR, "Special report: inter-Palestinian human rights violations in the Gaza Strip", 3 February 2009, available at: http://www.pchrgaza.org/files/Reports/English/pdf_spec/Increase_rep.pdf.

[689] No death sentence has been carried out since the Hamas takeover. Death sentences must be approved by the Palestinian Authority's President, who has not approved any of these sentences since Hamas took control of the administration of justice in Gaza. The last official execution was carried out in 2005 by firing squad.

[690] Mission interview with a civil society activist, Gaza City, June 2009.

1355. One of the individuals killed following their escape from the damaged al-Saraya prison was a Fatah affiliate who had been arrested and detained long before the Israeli military operations in Gaza. For about two weeks his family made several unsuccessful enquiries with different security services to discover his whereabouts. After finally tracing him, the family was able to visit him in the detention facility run by the internal security and saw that he was in poor health as the likely result of torture and inadequate detention conditions. He was reportedly not able to speak freely while in detention.

1356. He was still in al-Saraya prison on 28 December 2008, when it was hit during an Israeli aerial bombardment. His dead body was later found with signs of bullet wounds at al-Shifa hospital in Gaza City. The family was told that he had been shot dead by unknown persons. Independent sources consulted by the Mission seem to indicate that the victim had fled from al-Saraya detention facility after the aerial attack and had been wounded in the attack itself or shot by the prison staff trying to prevent detainees from escaping.[691]

1357. The Mission received a number of reports of violent attacks against individuals affiliated with Fatah[692] by armed men who broke into their homes. In one incident,[693] a group of persons claiming to be police officers knocked at the door of a family residence in Gaza City. The family was confronted by a group of 7 to 10 men wearing civilian clothes, most of them masked. They took one member of the family outside. When they brought him back roughly half an hour later, he appeared to have been beaten violently with metal pipes. He died of his injuries about a month later.[694]

1358. In another incident reported to the Mission, a group of 10 to 12 masked men wearing military uniforms broke into the residence of an individual who used to work for the preventive security under the Palestinian Authority before the Hamas takeover. When the family tried to resist attempts to capture him, the masked men started shooting indiscriminately, killing one member of the family and injuring 11 others. After the shooting, the masked men fled. According to the information provided to the Mission, when the injured were transferred to al-

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[691] The Mission ascertained that on 28 December 2008, the second day of the air strikes by Israel, about 200 to 300 prisoners were still held in the facility. Most of the almost 700 prisoners had been released in the previous days. According to a Human Rights Watch report based on the testimony of prisoners, "authorities … kept in custody roughly 115 alleged collaborators with Israel, about 70 Fatah supporters held on various charges, and some persons convicted of criminal offences who had been sentenced to death. Some of the remaining detainees escaped the following day when Israel bombed the prison, but were subsequently tracked down and killed by masked gunmen. The ICHR documented 20 cases of escaped prisoners being shot and killed by masked gunmen from December 28 to January 31; at least 12 of the victims had been detained in the prison for allegedly 'collaborating with the enemy.' Seventeen of the 29 people killed by gunmen that the Palestinian Center for Human Rights (PCHR) reported from December 28 to February 27 were prisoners and detainees who had fled the prison compound after Israel's attack, including 13 men sentenced to death for collaboration with Israel, three convicted of common crimes, and one man awaiting trial." (Under Cover of War….). The Gaza authorities informed the Mission (in correspondence of July 2009) that only 11 persons accused or convicted of criminal offences remained in their custody and were transferred "under supervision" to a residential apartment. See also chap. VIII.

[692] Dates and other identifying information have been removed to protect sources.

[693] Mission interviews, Gaza, June 2009.

[694] "In total, Palestinian human rights groups documented nine deaths by torture or severe beating in Gaza in January, February and March 2009". Under Cover of War….

Shifa hospital, members of the security services there prevented medical staff from providing assistance.

1359. The Mission was informed that – although serious – this was only one of many incidents in which this family had been targeted by Hamas operatives. One year earlier, a member of the family had been abducted and shot in the legs.

1360. The Mission was also informed of an incident in which a group of armed, masked men broke into the house of a Fatah supporter in Gaza City, abducted him and took him to a nearby location, where he was tortured and shot in the leg. He was reportedly left unconscious and rescued by neighbours. The ordeal reportedly lasted about one hour. The same individual had previously been arrested by members of the security services and kept in detention for a month and a half. He was released only after signing a pledge not to participate in Fatah political celebrations or occasions.

1361. The Mission was informed that, in another incident, three armed, masked men wearing symbols of al-Qassam Brigades broke into the residence in Gaza City of an individual who is a Fatah supporter and on the payroll of a Fatah-controlled institution. The men started beating everyone inside, including a child, and were screaming insults. All the males were then reportedly made to go outside – where other masked men were waiting – and were beaten with metal bars and with rifle butts. After this, the masked men took one of the men to a nearby location, where they again beat him very violently. While he was being beaten, the masked men reportedly kept insulting him, accusing him of collaborating with Israel and calling him a traitor. In response to a question by the Mission, a witness stated that he had the feeling that there was a clear chain of command among the group of masked men. Shortly before meeting the Mission, the same individual had been summoned by the internal security in Gaza along with other Fatah affiliates and kept for four hours at an internal security detention centre in Gaza City before being released.

1362. Similarly, a group of people who were identified as belonging to the internal security stormed the residence of an individual in Gaza City and beat members of the family. The group was composed of masked men who left only after shooting him in the leg. The victim was allegedly prevented by members of the security services from getting treatment at al-Shifa hospital for his injuries. He had previously been arrested and detained by members of the security services. During his detention, he was allegedly subjected to different forms of torture, including beatings, *shabah*,[695] electric shocks and sleep deprivation. His captors did not reportedly question him or levy specific charges against him. Finally, towards the end of his detention, he was formally accused of "having contacts with the Ramallah government". He was reportedly arrested again after the end of the conflict by members of the security services and again subjected to torture.

1363. The Mission was also informed of the case of another Fatah affiliate who had been summoned by the internal security in Gaza and detained on the basis of evidence provided by another member of his family who accused him of collaborating with Israel. Additional abuses allegedly committed by the security services include the confiscation of property from the families of Fatah affiliates, as well as additional cases of torture while in detention in facilities that they operate.

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[695] A torture method in which the prisoner is tightly shackled for long periods.

1364. The Mission was informed that the movement of many Fatah members was restricted during Israel's military operations in Gaza and that many were put under house arrest very early on and threatened with "action" should they disobey. Hundreds of cases in which house arrest was imposed without any kind of due process were reported to domestic human rights organizations during this period. Some individuals received a written order from the police or the internal security (the Mission has a sample of these orders), or a verbal order from the members of al-Qassam Brigades or the internal security. In some cases, those issuing these orders would not identify themselves. The Mission was informed of one case in which an individual put under house arrest in this way was allegedly shot dead by the security services when he and other members of his family were evacuated from their home owing to the presence of the Israeli armed forces.[696]

1365. The Gaza authorities denied that any arrests had taken place in Gaza between 27 December 2008 and 18 January 2009 owing to the insecurity created by the Israeli military operations.[697] They stated that arrests were made only after the end of these operations and only in relation to criminal acts, "security prevention and to restore public order".

A. Factual findings

1366. The Mission finds that the statements provided to it in relation to abuses committed by the Gaza authorities' security services are credible and has no reason to doubt their veracity.

1367. As for violent attacks against individuals either in their homes or after being taken from their homes, this finding is reinforced by a number of factors. The pattern of armed and sometimes uniformed, masked men breaking into houses is described in almost all incidents reported to the Mission. Also, in most cases those abducted from their homes or otherwise detained were reportedly not accused of offences related to specific incidents, but rather targeted because of their political affiliation. When charges were laid, these were always linked to suspected political activities contrary to the perceived interest of the Gaza authorities. Some of the accounts also indicate that elements of hierarchical control were present within the groups of armed, masked men executing the attacks. The testimonies of witnesses and the reports provided by international and domestic human rights organizations bear striking similarities and indicate that these attacks were not randomly executed, but constituted part of a pattern of organized violence directed mainly against Fatah affiliates and supporters.

1368. In relation to the allegations that between 27 December 2008 and 18 January 2009 more than 20 persons suspected of collaborating with Israel were killed or maimed by being shot in the leg or otherwise severely injured, the Gaza authorities stated that their investigations found these incidents to be the result of family feuds "or otherwise they were individual acts motivated by personal revenge." In addition, they stated that "the Government, through its competent agencies, opened investigations into these events immediately after the war, and submitted charges before the competent Courts."[698] According to PCHR, however, on 2 February 2009 a spokesperson for the Gaza authorities stated that "the Government makes distinctions between abuses of law and the actions of the Palestinian resistance during the war, regarding the execution of some collaborators who are involved in collaborating with the [Israeli] occupation."[699] The statement seems to express support for a number of acts of violence that occurred in the chaotic atmosphere created by the military operations.

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[696] Mission interview with a civil society activist, Gaza City, June 2009.

[697] Mission correspondence with the Gaza authorities, July 2009.

B. Legal findings

1369. Although not internationally recognized and therefore not able to be party to international human rights treaties, the Gaza authorities have an obligation to respect and enforce the protection of the human rights of the people of Gaza, inasmuch as they exercise effective control over the territory, including law enforcement and the administration of justice[700] (see chap. IV).

1370. Before Hamas took full control of the Gaza Strip in June 2007, its leaders had publicly indicated that they would respect international human rights standards.[701] In July 2009, the Gaza authorities formally stated to the Mission that they accepted the obligation to respect human rights and fundamental freedoms, including those enshrined in the Universal Declaration of Human Rights and in the Palestinian Basic Law. They added that "the Government is in permanent contact with the Red Cross and human rights organizations, and listens to their observations and takes into account their recommendations as far as it can, and those institutions can testify on that".[702]

1371. From the facts ascertained by it, the Mission finds that the actions by members of the security services described above constitute serious violations of human rights and are not consistent with either the Universal Declaration of Human Rights or the Palestinian Basic Law. In particular, regarding the Universal Declaration – which has become part of international customary law – they are in violation of article 3 in relation to everyone's right to life, liberty and security of the person; article 5 in relation to the freedom from torture and cruel, inhuman or degrading treatment or punishment; article 9 stating that no one shall be subjected to arbitrary arrest and detention; articles 10 and 11 regarding the right to fair and impartial legal proceedings; and article 19 regarding the freedom of opinion and expression, including the freedom to hold opinions without interference.

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[698] Written reply from the Gaza authorities to the Mission; July 2009.

[699] Taher al-Nouno, a spokesman of the Gaza authorities, attended the press conference with Ehab al-Ghusein, spokesman of the Ministry of the Interior, and Islam Shahwan, spokesman of the Palestinian police in Gaza. See "Special report…".

[700] For example, in their joint report on Lebanon and Israel, a group of four United Nations Special Rapporteurs concluded that: "Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights. […] It is especially appropriate and feasible to call for an armed group to respect human rights norms when it exercises significant control over territory and population and has an identifiable political structure" (A/HRC/2/7, para. 19). See A/HRC/6/76, paras. 4-9, for a brief overview of relevant events leading up to Hamas' seizure of full control in the Gaza Strip. (See also Andrew Clapham, Human Rights Obligations of Non-State Actors (Oxford, Oxford University Press, 2006), chap. 7.

[701] See A/HRC/8/17.

[702] The Gaza authorities have allowed IHCR to function uninterruptedly and regularly deal with the complaints it brings to their attention.

1372. The Mission takes note of the statement of the Gaza authorities of the opening of criminal investigations into some of the killings that happened between 28 December 2008 and 18 January 2009. It is, however, concerned that – according to the Gaza authorities – these investigations concern only family feuds or individual acts motivated by personal revenge. The Mission also notes with concern that, at the time of drafting this report, appeals by international and domestic human rights organizations to the Gaza authorities to conduct serious investigations into all allegations of violations, to bring perpetrators to justice and to publish all of their findings remain unanswered. Failure to conduct credible investigations into these allegations and hold those responsible accountable will prevent the victims from accessing justice and encourage a culture of impunity.

THE WEST BANK, INCLUDING EAST JERUSALEM

1373. As explained above in chapter I, the Mission believes that the reference in its mandate to violations "in the context" of the military operations in Gaza required it to go beyond the violations that occurred in and around Gaza. it also believes that violations within its mandate in terms of time, objectives and targets, include those that are linked to the December 2008 – January 2009 military operations, and include restrictions on human rights and fundamental freedoms related to the strategies and actions of Israel in the context of its military operations.

1374. Developments in Gaza and the West Bank are closely interrelated, in the Mission's view, an analysis of both is necessary to reach an informed understanding of and to report on issues within the Mission's mandate. On the one hand, the events in Gaza have consequences in the West Bank, on the other, pre-existing problems in the West Bank have been exacerbated by the Gaza military operations.

1375. In its examination of the West Bank with respect to actions taken by Israel, the Mission focused on four key aspects in their linkage to the Israeli military operations in Gaza: (a) the sharp increase in the use of force by Israeli security forces, including the military, in the West Bank; (b) the tightening and entrenchment of the system of movement and access restrictions; (c) the issue of Palestinian detainees and especially the increase in child detainees during and after the military operations; and (d) the Gaza corollary of the detention of Hamas members of the Palestinian Legislative Council.[703] While the treatment by the Gaza authorities of those opposing its policies is discussed in chapter XIX, similar issues with regard to the conduct of the Palestinian Authority in the West Bank also called for investigation. Linkages with the Israeli operation in Gaza are elaborated in the respective chapters.

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[703] The issue of Gazans detained by Israel during and following the operations from December 2008 to January 2009 is discussed in chapter XV.

Methodology

1376. One consequence of the refusal by Israel to cooperate with the Mission was that it was unable to visit the West Bank to investigate alleged violations of international law. The Mission nonetheless received many oral and written reports and other relevant materials from Palestinian, Israeli and international human rights organizations and institutions. In addition, the Mission met with representatives of a number of human rights organizations and with members of the Palestinian legislature and other community leaders (see annex). It invited experts, witnesses and victims to participate in the public hearings held in Geneva on 6 and 7 July 2009. The Mission also conducted telephone interviews with affected individuals and witnesses, and reviewed relevant video and photographic material.

1377. Owing to the lack of access to the West Bank, the chapters in the section below rely on secondary information to a greater extent than in the previous sections.

1378. The Mission found the witnesses it heard in relation to the situation in the West Bank to be credible and reliable. The Mission is also satisfied that the reports it reviewed and to which it refers are credible and based on sound methodologies.

1379. The Mission also wrote to the Palestinian Authority and the Government of Israel seeking information and official positions on, inter alia, the issues addressed in this section. The information received by the Palestinian Authority was taken into account in the present chapter. The Government of Israel has not responded to the Mission's requests.

1380. Owing to the complexity of the issues relating to Palestinian detainees and of freedom of movement and access, the chapters on these issues include an explanatory introduction that sets out the factual parameters of the problems and explains some of the key terminology and concepts.

XX. TREATMENT OF PALESTINIANS IN THE WEST BANK BY ISRAELI SECURITY FORCES, INCLUDING USE OF EXCESSIVE OR LETHAL FORCE DURING DEMONSTRATIONS

1381. The information gathered by the Mission indicates an ongoing pattern of ill treatment and use of force by the Israeli security forces against Palestinians in the West Bank, including East Jerusalem. Ill treatment and low levels of force are reported being common in encounters at checkpoints between Palestinians and the Israeli security forces (army, police and border police),[704] while a greater, sometimes lethal, degree of force has been used during demonstrations, incursions and search and arrest operations. With heavily armed Israeli military forces present throughout the West Bank, the possibility of violence always exists. As a witness reported to the Mission, "the use of force is part of the system of control of the occupation, where a key element is fear, which can only be sustained by the constant threat and the periodic act of violence".[705]

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[704] B'Tselem, "Beatings & Abuse" (www.btselem.org/english/beating_and_abuse/index.asp). For the use of private contractors at checkpoints, see chap. XXI.

[705] Mission interview with Defence for Children International-Palestine Section, 3 July 2009.

1382. Violence against Palestinians in the West Bank does not only come from the security forces. The Israeli military operations in Gaza commenced when the West Bank was experiencing some of the worst acts of settler violence in several years.[706]

1383. Witnesses and experts informed the Mission of a sharp increase in the use of force by the Israeli security forces against Palestinians in the West Bank from the commencement of the Israeli operations in Gaza.[707] A number of protesters were killed and scores were injured by Israeli forces during Palestinian demonstrations following the beginning of the,[708]the degree of violence employed in the West Bank during the operations in Gaza, has been sustained since 18 January.[709] Reports from non-governmental organizations confirm this information.[710]

A. Settler violence in the West Bank in the period preceding the Israeli military operations in Gaza

1384. In early December 2008, Israeli settlers in the city of Hebron rioted and perpetrated acts of violence against the local Palestinian population. Although Israel, as the occupying power, has the responsibility to maintain public order and safety in the occupied territory,[711] the Israeli police did not intervene to protect Palestinians.[712] Settler violence is a regular occurrence, targeting primarily Palestinian civilians and their property but also, on occasion, Israeli soldiers.[713] According to the Office for the Coordination of Humanitarian Affairs, "a root cause of the phenomenon is Israel's decade-long policy of facilitating and encouraging the settling of its citizens inside occupied Palestinian territory, defined as transfer of population and prohibited by international humanitarian law."[714] Israeli media attribute the increase in settler violence to the settler movement which became increasingly radicalized after the Gaza Disengagement in August 2005.[715]

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[706] Office for the Coordination of Humanitarian Affairs Special Focus: "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008. In its reply to the Mission (5 August 2009), the Palestinian Authority reported 58 acts of violence perpetrated by settlers on Palestinian civilians from 16 November 2008 to 15 December 2008, compared to a monthly average of 26 reported incidents in the year to date..

[707] The NGO Al-Haq reported another particularly disturbing case of "what appears to be a willful killing" of a farmer from Hebron on 17 January 2009. According to medical personnel who were asked to collect his body from the Israeli soldiers by whom he had been detained, the farmer appeared to have been shot at point blank in the stomach while seated. See "A vicious reminder of occupation in the West Bank: Israeli soldiers Kill Palestinian farmer in Hebron". Al-Haq press release, 17 January 2009.

[708] Mission interview with Al-Haq, 2 July 2009 (six deaths were recorded by Al-Haq). See also Weekly Protection of Civilians reports of the Office for the Coordination of Humanitarian Affairs for the relevant period; the communication received by the Mission from the Palestinian Authority, which reported 30 injuries by shooting from 27 December 2008 to 18 January 2009; the statements of Mohamed Srour and Jonathan Pollak at the public hearings in Geneva, 6 July 2009; and B'Tselem press release of 18 June 2009 "Prohibit live ammunition in circumstances that are not life-threatening in the West Bank".

[709] Mission meetings with B'Tselem on 3 July 2009 and Al-Haq on 2 July 2009.

[710] B'Tselem reported an increase in the number of beatings, and referred to some particularly serious cases, including that of an elderly shepherdess whose arm was broken by border police on 11 March 2009. "Border police break arm of Halimeh a-Shawamreh, near the Separation Barrier", Deir al-'Asal al-Foqa, March 2009".

[711] The Palestinian Authority is not allowed to enter the part of the Old City of Hebron known as "H2" as a result of the Protocol Concerning the Redeployment in Hebron of January 1997.. With regard to the general situation in Hebron see www.btselem.org/English/Hebron/.

[712] "Al-Haq calls for immediate measures to stop settler violence in Hebron and throughout the Occupied Palestinian Territory", Al-Haq urgent release,5 December 2005. In its reply to the Mission, the Palestinian Authority reported 335 settler attacks from 19 May 2008 to 17 July 2009.

[713] In 2008, the Office for the Coordination of Humanitarian Affairs recorded 290 incidents of settler violence, resulting in 131 Palestinian deaths, a substantial rise over previous years. Most incidents reported involved groups of

1385. According to various sources,[716] rioting erupted in Hebron on 4 December 2008 after the evacuation by the Israeli security forces of Israeli settlers from the Rajabi family home in the old city of Hebron. United Nations sources reported that, at first, clashes erupted between settlers and Israeli security forces, causing injuries on both sides; afterwards, "violence continued in Hebron city. Groups of settlers threw stones at Palestinian houses and set fire to vehicles, agricultural fields, houses and the contents of one mosque. Settlers also attempted to force entry into Palestinian homes."[717] One incident in which Israeli settler Ze'ev Braude shot and injured three members of the al-Matariyeh family was filmed and broadcast by the international media.[718]

1386. The wave of violence continued for days.[719] Palestinian hospitals reported 17 injuries during the period, including five bullet wounds.[720]

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settlers attacking vulnerable targets (children, women and the elderly) mainly in the Hebron and Nablus areas. In January 2007, B'Tselem launched a camera distribution and video advocacy project focusing on the Occupied Palestinian Territory. The project is aims at providing "Palestinians living in high-conflict areas with video cameras, with the goal of bringing the reality of their lives under occupation to the attention of the Israeli and international public, exposing and seeking redress for violations of human rights." The B'Tselem project has resulted in footage of these kinds of attacks being publicized, such as the attack by settlers on herders in Susya, June 2008..

[714] Office for the Coordination of Humanitarian Affairs Special Focus: "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008.

[715] See also, "Israel's religious right and the question of settlements", International Crisis Group Middle East Report N°89 – 20 July 2009.

[716] "Settler violence after evacuation of Occupied House", Temporary International Presence, Hebron, Press Release; "Israel braces for settler violence in wake of Hebron house evacuation", *Ha'aretz*, 5 Decemeber 2008, and "Dozens injured as Israeli army removes settlers from Hebron house", Maan News Net, 4 December 2008.

[717] Office for the Coordination of Humanitarian Affairs Special Focus: "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008.

[718] For example, "Settlers filmed shooting at Palestinians turn themselves in", *Ha'aretz*, 7 December 2008. The settler was eventually released and not charged or prosecuted.

[719] According to the Office for the Coordination of Humanitarian Affairs, "settler violence quickly spread to other West Bank areas (…) groups of settlers threw stones at Palestinian vehicles in more than twelve locations on the day of the evacuation and attacked Palestinian communities, setting fire to Palestinian property and land, cutting down olive trees, slashing vehicle tires and vandalizing other property", Office for the Coordination of Humanitarian Affairs Special Focus: "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008., See also the Alternative Information Centre Settler Violence report for November/December 2008 available at www.alternativenews.org/publications/164-settler-violence-reports/1829-settler-violence-report-november-december-2008-.html and *Ha'aretz*: www.haaretz.com/hasen/spages/1043794.html

[720] "IDF declares Hebron area a closed Military Zone after settler rampage", *Ha'aretz*, 4 December 2008.http:///

1387. The use of force against Gaza solidarity demonstrations in the West Bank during the Israeli operations in Gaza

1388. There was a significant increase in the use of force by Israeli security forces during demonstrations in the West Bank after the start of the Israeli operations in Gaza. The degree of force used against protests during the previous year had already been high, including during protests against the Wall in places such as Jayyous, al-Ma'sara, Bi'lin and Ni'lin.[721] The villages where demonstrations are regularly held have lost or stand to lose much of their land to Israeli settlements and the Wall. A vibrant grass-roots, non-violent resistance movement has evolved that has attracted support from Israeli and international activists. New tactics and weapons used by the Israeli security forces aimed at suppressing the popular movement[722] have resulted in deaths and injuries. For example, in July 2008, Israeli border police killed two children, Ahmad Musa, aged 10,[723] and Yusef Amera, aged 17, both of whom were shot in the head.[724]

1389. Another cause of concern for the Mission were further allegations of the use of unnecessary, lethal force by Israeli security forces. At the public hearing in Geneva of 6 July 2009, two witnesses, Mohamed Srour and Jonathan Pollak, described the fatal shooting, on 28 December 2008, of two young men from the village of Ni'lin during a protest against the Israeli operations in Gaza. Mr Srour was himself shot in the leg during the same protest.[725]

1390. At the hearing on 6 July, Mr Srour stated that as a result of this war, many people all around the West Bank, but also in his village Ni'lin, wanted to demonstrate and express their solidarity with the people of Gaza. The demonstration included important participation of people from the different solidarity movements, from Israel as well from the international community." The two witnesses spoke of the atmosphere that they had encountered in the confrontation with the soldiers and border police, which was markedly different from the situation before the operations in Gaza. Mr. Pollak stated:

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[721] "Repression Allowed, Resistance Denied: Israel's suppression of the popular movement against the Apartheid Wall of Annexation", Addameer and Stop the Wall report, July 2009. For a list of the 19 people including 11 children killed in anti-wall demonstrations up until July 2009, see http://palsolidarity.org/2009/06/7647 .

[722] See Ni'lin Factsheet at http://stopthewall.org/factsheets/1669.shtml

[723] 29 July 2008: Killing of Ahmed Husam Yusef Mousa (10) in Ni'lin. According to Al-Haq "Ahmad Husam Musa, a ten-year-old child, hid in an olive grove. A member of the Israeli Border Police saw Ahmad Musa, left the Border Police vehicle, aimed his rifle and fired a live bullet. Shot from a distance of 50 metres, the bullet entered Ahmad Musa's forehead and exited through the back of his skull. While two of the demonstration's organisers attempted to carry Ahmad Musa to safety, they were fired upon by the Border Police. They succeeded in carrying the child to safety, but he was already dead", "Right to life of Palestinian children disregarded in Ni'lin as Israel's policy of wilful killing of civilians continues", Al-Haq press release, 7 August 2008.

[724] "Right to life of Palestinian children disregarded in Ni'lin as Israel's policy of wilful killing of civilians continues", Al-Haq press release, 7 August 2008. See also "Repression Allowed, Resistance Denied: Israel's suppression of the popular movement against the Apartheid Wall of Annexation", Addameer and Stop the Wall report, July 2009. To illustrate the use of unusual weapons which, the report states, is aimed at creating lasting injury, on 13 June 2008, Ibrahim Burnat (aged 26) was shot three times in the thigh while in the weekly anti-Wall demonstration in Bi'lin. According to his medical report, he was shot with an explosive bullet. The report also states that, in the four villages mentioned, 1,566 people had been injured while six people had been killed at protests.

[725] The testimony of Mr. Srour and Mr. Pollak, including a video of the events can be viewed at http://webcast.un.org/ramgen/ondemand/conferences/unhrc/gaza/gaza090706pm1-eng.rm?start=00:35:37&end=01:41:24.

> The atmosphere of the incident, and during and after the start of the war generally was that all checks and balances had been removed. The soldiers were saying things related to the Gaza war, taunting things like, "It's a shame we're not in Gaza killing Arabs." There seemed to be an enthusiasm to confront and the amount of live ammunition used shows this. The behaviour of the soldiers has escalated immensely – not that in the past the army was so gentle.

1391. According to the witnesses, the main demonstration had ended when the army and border police used tear gas and stun grenades to disperse the crowd. The next sequence of events took place on the edge of the village, at a considerable distance from the site of the construction of the Wall. The two young men killed were part of a small group of demonstrators, some of whom had thrown stones at the soldiers. In video footage, four or five soldiers appeared to be casually walking around and not seemingly threatened. No tear gas was used at that stage. Dozens of rounds of live ammunition were fired in the direction of the group of young men, hitting three of them within minutes of each other. Mohamed Khawaja was shot in the forehead; Arafat Khawaja, who had turned to run away, was shot in the back, and Mohammed Srour was shot in the leg. Subsequently an ambulance was prevented from reaching the victims, who had to be carried some distance and were eventually put onto a pick-up truck, at which the army fired tear gas. Arafat Khawaja was pronounced dead on arrival at the hospital and Mohamed Khawaja passed away a few days later.

1392. Two Palestinians were killed during other protests against the military operations in Gaza. On 4 January, Mufid Walwel was shot dead during a demonstration near Qalqilya, where the Wall is to be built. In Hebron, on 16 January, Mus'ab Da'na died after being shot in the head. According to an NGO report, the Israeli border police are believed to have been responsible for both incidents.[726]

1393. The Mission has asked the Government of Israel to explain the increased use of live ammunitions during demonstrations in the West Bank, but has received no reply.

B. The increased level of force since the end of the operations in Gaza

1394. Since the end of the December-January military operations in Gaza, the increased level of force has reportedly continued against demonstrators and in other situations. The Mission heard from an eye witness, how, on 13 March 2009, United States citizen Tristan Anderson was hit, while participating in an anti-Wall demonstration in Ni'lin, with a high velocity tear gas canister in the forehead. According to the witness, Mr. Anderson was taking pictures of Israeli soldiers and border police attacking the demonstrators. A high velocity long-range tear gas canister was used at short range, crushing his forehead. As he laid on the ground, the border police, who would have been able to seen him falling down and lying on the ground, continued to shoot tear gas in his direction. Video footage received by the Mission showed Palestinian paramedics in bright orange uniforms putting Mr. Anderson's body on to a stretcher, a tear gas canister landing directly beside them and a large cloud of gas developing.[727] According to the witness, Israeli forces delayed Mr. Anderson's transfer from the Palestinian ambulance to an Israeli ambulance at the checkpoint before entering Israel.[728] At 1 August 2009, Mr. Anderson remains in a critical condition in an Israeli hospital.

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[726] Al-Haq affidavit No. 4667/2009 and 4608/2009.

1395. On 17 April 2009, in Bi'lin, Bassem Abu Rahma was killed by a high velocity tear gas canister which was shot at his chest from a distance of 30 to 40 metres. The killing, which took place during a peaceful demonstration against the Wall, was filmed.[729] The footage shows Mr. Abu Rahma standing on a small hill, clearly visible and not armed or otherwise posing a threat.

1396. Eye witnesses reported to the Mission that they felt that it had become almost a sport for snipers, who now routinely enter villages and occupy roofs of buildings, to aim at protesters in a manner that is inappropriate in the context of crowd control, with apparent disregard for the lives or limbs of the persons they hit.[730]

1397. On 5 June 2009, five people were shot by snipers in a demonstration in Ni'lin, of whom one, Aqel Srour, was killed, and another, a 15 year-old boy, was shot in the abdomen and will be permanently disabled.[731] Al-Haq described the shooting of Srour, who according to Al-Haq had run to assist the boy who was shot in the abdomen, as a case of "wilful killing"[732].

1398. The weapons used by the security forces are also a cause for concern. Many of the injuries to protesters during anti-Wall demonstrations in recent months (in Ni'lin, Bi'lin, Jayyous, Bitunya and Budrus) and the death of Aqel Srour and that of a 14-year-old who was killed in Hebron in February[733]were reportedly inflicted by a .22 caliber Ruger rifle. B'Tselem has protested against the use of this weapon as a means of crowd control on the grounds that it is potentially lethal.[734] In its response to B'Tselem's letter of 26 February, the Israeli Judge Advocate General wrote, that "the open-fire regulations applying to the .22 ammunition are comparable, in general, to the open-fire rules applying to "ordinary" ammunition" and that "following your letter, we directed that the forces again be instructed with respect to the binding Open-Fire Regulations that apply to use of the Ruger rifle."[735] However, from the nature of the killing of Aqel Srour and the injuries sustained by protesters in the months following the Judge Advocate General's response, it is clear that the use of the Ruger rifle has not been tempered.[736]

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[727] See http://palsolidarity.org/2009/03/5324.

[728] Mission telephone interview with Ulrika Karlsson, 5 August 2009. Israel does not allow Palestinian ambulances to enter Israel. The witness also reported having been shot herself in January, in the calf, with a .22 bullet shot aimed at her, while moments later the only other person near her was shot in the foot. See also the Democracy Now news report "US Consul General says awaiting Israeli Report on IDF shooting of American citizen", 16 March 2009.

[729] "Our peaceful village should no longer be the graveyard of our youth", 17 April 2009, at the website www.bilin-village.org/english/articles/press-and-independent-media/Our-Peaceful-Towns-Should-No-Longer-Be-The-Graveyard-Of-Our-Youth.

[730] Mission telephone interview with Ulrika Karlsson on 5 August 2009 and direct interview with Jonathan Pollak on 6 July 2009.

[731] Mission interview with Jonathan Pollak and Mohamed Srour on 6 July 2009 and telephone interview with Ulrika Karlsson on 5 August 2009. See also Addameer report.

[732] "The willful killing of Aqel Srour following a Ni'lin demonstration against the Annexation Wall: a deplorable illustration of impunity's slippery slope", Al-Haq press release, 25 June 2009.

[733] "Prohibit live ammunition in circumstances that are not life-threatening in the West Bank", B'Tselem, Press Release, 18 June 2009.

[734] Correspondence received by the Mission, available at www.btselem.org/English/Press_Releases/20090709.asp.

1399. The Israeli armed forces' open-fire regulations for the West Bank provide that different rules apply in situations where Israeli citizens are present, as compared to situations where there are only Palestinians present.[737] For example, they provide for the use of live ammunitions under certain conditions, in the case of violent "disturbances"[738] near the Wall or in the nearby area. Where Israelis participate, however, the use of live ammunitions is forbidden. Similarly different provisions are found with regard to the use of warning shots and rubber bullets. Witnesses indicated to the Mission, however, that the army no longer distinguishes between Palestinians and their Israeli and international supporters, and uses a greater degree of force against all.[739]

1400. The Mission asked the Government of Israel about the differences in open fire regulations applied in the Occupied Palestinian Territory in situations in which Israeli citizens are present as opposed to situations where none are present, but has received no reply.

1401. In a recent court hearing, Colonel Virob, an Israeli Brigade Commander in the West Bank, defended the routine use of force in achieving the goals of the occupation.[740] According to the Association for Civil Rights in Israel, when Colonel Virob was asked about using physical force during an investigation against people who are not suspects, he stated that "using violence and aggression to prevent the situation from escalating and the need to use even more violence is not only allowed but sometimes imperative (…), giving a blow, a push, in a situation even with people who are not involved in an operational situation, if it can advance the mission, is certainly possible." He added that "the way you use violence should also be appropriate (…), a slap, sometimes a hit to the back of the neck or the chest, in cases that there is friction, a reaction from the Palestinian side, sometimes a knee jab or strangulation to calm someone down is reasonable."[741]

1402. The Mission considers with concern reports of gratuitous abuse by Israeli soldiers. It heard testimonies in a video footage shown on Israeli television[742] that described a search and detain operation by the Kfir brigade in the West Bank village of Haris. Hundreds of troops had participated in a nocturnal raid on a village aimed at finding boys who were thought to have thrown stones at settlers' cars some days previously. On 9 June 2009, *The Independent* reported on the operation, quoting soldiers of the Kfir Brigade involved. One was quoted as saying he saw many soldiers "just knee [Palestinians] because it's boring, because you stand there ten hours, you're not doing anything, so they beat people up."[743] A second soldier described a "fanatical atmosphere" during the search operations. "We would go into a house and turn the whole thing upside down", he recalled, but no weapons were found. "They confiscated kitchen knives." The first soldier stated that numerous soldiers were involved. "There were a lot of reservists that participated, and they totally had a celebration on the Palestinians: curses, humiliation, pulling hair and ears, kicks, slaps. These things were the norm." He described the beating of a child:

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[735] Letter from Major Yehoshua Gortler, Legal Assistant to the Judge Advocate General to B'Tselem, dated 15 March 2009.

[736] See also B'Tselem letter to Brig. Gen. Avichai Mandelblit, Judge Advocate General, 17 June 2009.

[737] See *Open Fire Regulations Booklet for the Soldier in Judea and Samaria region*, issued by the Headquarters of the Central Command in July 2006. See "Open fire regulations for Palestinians only" (in Hebrew), *Maariv* at www.nrg.co.il/online/1/ART1/590/452.html.

[738] Situations of disturbances are defined as those that may be the result of demonstrations, marches, and similar events.

[739] Mission interview with Jonathan Pollak, 6 July 2009.

[740] "Truth walks into a Jaffa court", by Michael Sfard, Yesh Din, 10 June 2009.

[741] Association for Civil Rights in Israel Press Release, 24 June 2009.

[742] Available at http://news.nana10.co.il/Article/?ArticleID=641918&TypeID=1&sid=126.

> The soldiers who took [detainees] to the toilet just exploded [over] them with beatings; cursed them with no reason. When they took one Arab to the toilet so that he could urinate, one of them gave him a slap that brought him to the ground. He had been handcuffed from behind with a nylon restraint and blindfolded. He wasn't insolent, he didn't do anything to get on anyone's nerves ... [it was] just because he's an Arab. He was something like 15 years old.

1403. He stated that the incidents in the toilet were the "extreme" and added that the beatings did not draw blood. They were "dry beatings, but it's still a beating".[744]

1404. Video footage uploaded to the internet by Israeli border police, and filed under "comedy" offers an insight into how wanton abuse is perceived by members of the security forces themselves.[745] The Mission has received reports of other, similar occurrences,[746] giving rise to the concern that an increased level of force and the dehumanization have become normalized in the practice of security forces.

C. The role of impunity

1405. Several witnesses told the Mission that, during the operations in Gaza, the sense in the West Bank was one of a "free for all", where any behavior was permitted for Israeli forces. An even greater use of force than that used in the West Bank could be attributed to a change in atmosphere or attitude towards the "other" during time of war. There are indications that this shift in attitude was also apparent during the war in Lebanon in 2006.[747] The concept of what is considered "normal" and "acceptable" conduct risks shifting to even higher levels, if those in positions of responsibility do not respond appropriately. In the face of the recently increase in violence by the Israeli security forces in the West Bank, B'Tselem stated that condemnations by Ministers and other officials

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[743] "Bound, Blindfolded and Beaten, By Israeli Troops", *The Independent*, 9 June 2009.

[744] Ibid.

[745] "Border Police upload footage of their abuse of Palestinians to YouTube", *Ha'aretz*, 19 June 2009. The article reports how in the footage an Arab youth slaps himself while a voice is heard instructing him to say "I love you, Border Police," and "I will f**k you, Palestine," in Arabic, to the raucous laughter of those present, all border police.

[746] For example, "Soldiers come across Palestinians and detain and abuse them for hours, Dura, April 2009", B'Tselem.

[747] Mission telephone interview with Sarit Michael, 5 August 2009. In the video footage of the shooting of an Israeli demonstrator during the war in Lebanon in 2006, a border police member can be heard saying, after the order to

> remain solely declarative. Security forces, meanwhile, misusing their power, continue to abuse and beat Palestinians, among them, minors (…). If a message is sent to security forces, it is that even if the establishment does not accept acts of violence, it will not take measures against those who commit them. The effect of such a message is that the lives and dignity of Palestinians are meaningless and that security forces can continue, pursuant to the function they serve, to abuse, humiliate, and beat Palestinians with whom they come into contact.[748]

1406. In the past, every case in which a Palestinian not participating in hostilities was killed was subject to criminal investigation. This policy changed in 2000. Criminal investigations are now the exception,[749] these cases are now simply discussed in an "operational debriefing" by the military itself.[750] In 2003, the Association for Civil Rights in Israel and B'Tselem filed a petition to reverse this policy change, demanding that every civilian death be independently investigated. The petition included demands for investigations into individual deaths as well as the principle question relating to the overall policy. The former were dismissed, while the principle question is still pending.[751]

1407. Yesh Din reports that over 90 per cent of investigations into settler violence are closed without an "indictment being filed".[752] B'Tselem reported in June 2009 that the charges against Mr Braude, the Hebron settler who was filmed shooting and injuring three Palestinians in December 2009, would be dropped, as the court had ordered that "secret evidence" against him be disclosed, and the potential public harm of this disclosure would outweigh the harm done by a person, documented as having committed a violent crime, being released back into society.[753]

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open fire was given, "now we're in Lebanon". When passing by the injured demonstrator lying on the ground bleeding from his head injury, the commander ignored the calls by a woman to get an ambulance for the injured Israeli. He answers that there are many Israelis injured in Lebanon, too. As shown in the footage, the demonstrator was shot at close range from behind, as he was walking in front of the soldiers. See www.liveleak.com/view?i=8dba196f36.

[748] "Beating and Abuse", B'Tselem.

[749] Mission telephone interview with the Association for Civil Rights in Israel, 29 July 2009.

[750] Mission interview with Daniel Reisner, 6 July 2009. See also "Response to the Attorney-General's Refusal Concerning a Gaza Probe" at www.acri.org.il/eng/story.aspx?id=635 and chapter XXVIII below.

[751] See the Association for Civil Rights in Israel press release at www.acri.org.il/eng/Story.aspx?id=216. Text of the petition is available at www.btselem.org/english/Legal_Documents/HC9594_03_Investigations_Appeal.rtf.

[752] "Law Enforcement upon Israeli Civilians in the OPT", Yesh Din data sheet, July 2008.

[753] B'Tselem compares this to the admission in judicial proceedings of secret evidence in the prosecution of Palestinians (see also section below). See "8 June '09: Bring Ze'ev Braude, the shooter from Hebron, to justice" B'Tselem press release.

1408. In July 2009, an Israeli activist who had been shot in the head in 2006 by the Israeli border police was awarded compensation for his injury in an out of court settlement. To date, the commander who ordered the shooting has not been subject to criminal investigation.[754]

1409. On 7 July 2008, Ashraf Abu-Rahma was shot at short range while blindfolded and handcuffed. The incident was filmed and widely broadcast.[755] When the Israeli Military Advocate General charged the officer who ordered the shooting with "conduct unbecoming", Israeli international law Professor Orna Ben-Naftali stated that "the decision (was) indicative of a policy of tolerance towards violence against non-violent civilian protests against the construction of the Separation Wall". She added that "the implication of such a policy is twofold: first, it might transform 'conduct unbecoming' – which as a matter of law is a war crime – into a crime against humanity; second, it may well be construed as an invitation to the international community to intervene through the exercise of universal jurisdiction."[756]

D. Legal analysis and conclusions

1410. Israel has obligations to Palestinians in the West Bank under both international humanitarian law and international human rights law. With regard to the former, the obligations flow from the status of Israel as the occupying power and the consequent obligations concerning protected persons. With regard to the latter, specific human rights obligations to all individuals in the West Bank arise from both customary law and the obligations assumed by Israel under the various human rights conventions that it has ratified. The obligations under both bodies of law are complementary and mutually reinforcing, and provide a clear framework against which the facts outlined above may be analysed (see chapter IV above). With regard to the issues discussed in the present chapter, the most relevant obligations are set out below.

1. Violence by settlers against Palestinians in the West Bank

1411. Israel has an obligation under customary law, as reflected in article 43 of the Hague Regulations, to ensure public order and safety in the West Bank:

> Article 43. The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

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[754] Mission telephone interview with the Association for Civil Rights in Israel, 29 July 2009.

[755] "Soldiers fires 'rubber' bullet at handcuffed, blindfolded Palestinian", B'Tselem, July 2008, at www.btselem.org/English/Video/20080707_Nilin_Shooting.asp.

[756] "Whose 'conduct unbecoming'? The shooting of a handcuffed, blindfolded Palestinian demonstrator, by Orna Ben-Naftali and Noam Zamir, *Journal of International Criminal Justice*, 3 March 2009 Recently, the Israeli Military Advocate General's decision to charge commander Omri Bomberg and his subordinate with "conduct unbecoming" was overturned, the second time in recent decades that a decision by the Military Advocate General has been overturned. The first being related to the demotion of General Tamir, who let his 14-year-old son drive his military vehicle, see "Neither an officer nor a gentleman", *Ha'aretz*, 31 July 2008; and "Israeli High Court of Justice rules against Judge Advocate General's 'extremely unreasonable' decision", B'Tselem press release, 1 July 2009.

1412. This obligation is supported by the obligation by Israel under article 27 of the Fourth Geneva Convention (set out in chapter XV above) to ensure that Palestinians, as protected persons, are protected against all acts or threats of violence.

1413. Israel also has obligations under international human rights law to protect Palestinians from violence by private individuals, and to investigate and punish acts of violence through the application of criminal law, without discrimination.

1414. Palestinians thus have "the right to security of the person" under article 9 (1) of the International Covenant on Civil and Political Rights, which the Human Rights Committee has read to mean that the State has an obligation to take reasonable and appropriate measures to protect individuals from threats to the life of persons under their jurisdiction, including threats from private actors.[757] Under article 2 of the Covenant, Israel has an obligation "to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant" and to "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy". In applying the law, Israel has an obligation under article 26 of the Covenant to ensure that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law". Finally, insofar as acts of violence amounting to cruel, inhuman or degrading treatment are perpetrated by private individuals with the acquiescence of public officials (including security forces), Israel has an obligation under article 16 of the Convention against Torture to prevent such acts:

> Article 16 (1). Each State party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment …, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Conclusions

1415. With regard to violent acts perpetrated by settlers against Palestinians, such as those relating to the cases of December 2008 in Hebron reported above, the Mission concludes, on the basis of the reports received and the video footage viewed, that Israel has failed to fulfil its obligations to protect the Palestinians from violence by private individuals under both international human rights law and international humanitarian law. In some instances, evidence of the acquiescence of the security forces in this violence could amount to a violation of the relevant obligations relating to cruel, inhuman or degrading treatment.

1416. Insofar as this acquiescence only occurs in respect of violence against Palestinians by settlers, and not vice-versa, there is a strong argument that the behaviour of the security forces is in breach of the obligations of Israel to not discriminate on the basis of national origin under the International Covenant on Civil and Political Rights.

1417. The facts also suggest a violation of article 26 of the International Covenant on Civil and Political Rights guaranteeing equal protection of the law, particularly insofar as there is a failure to investigate Palestinians' allegations of assault by settlers.

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[757] For example, *William Eduardo Delgado Paez v. Colombia*, Communication 195/1985, views adopted 12 July 1990.

1418. Finally, the failure by Israel to adequately investigate allegations of the failure of the State to protect Palestinians, and of the acquiescence of state actors before the violence of private actors and thus to provide an effective remedy for those suffering human rights violations also place Israel in violation of article 2 of the International Covenant on Civil and Political Rights.

2. Actions by Israel with regard to Gaza solidarity demonstrations

1419. All individuals in the West Bank enjoy the right to freedom of expression provided in article 19 of the International Covenant on Civil and Political Rights:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

1420. Israel has an obligation under article 21 of the International Covenant on Civil and Political Rights to recognize the right of peaceful assembly. While restrictions may be placed on the exercise of this right, they must be "in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others". In accordance with article 2 of the Covenant, any restrictions on the right of peaceful assembly can only be imposed "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

1421. In dealing with Palestinian civilians, including in the context of public demonstrations, Israel has an obligation under articles 2 and 6 of the International Covenant on Civil and Political Rights to ensure, without distinction of any kind, that no one is arbitrarily deprived of their life:

> Article 2 (a). Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
>
> Article 6 (1). Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

1422. A further obligation on Israel is to ensure that no one is subject to torture or to cruel, inhuman or degrading treatment or punishment (article 7 of the International Covenant on Civil and Political Rights and articles 2 and 16 of the Convention against Torture), without discrimination.

1423. The Fourth Geneva Convention places a number of obligations on Israel relevant to the treatment of Palestinians participating in demonstrations. Under article 27, Israel must ensure that Palestinians as protected persons are "at all times … humanely treated, and … protected, especially against all acts of violence or threats thereof and against insults and public curiosity". Treatment by Israel as the occupier must be "without any adverse distinction based, in particular, on race, religion or political opinion". From article 32 derives the prohibition of "taking any measure of such a character as to cause the physical suffering or extermination of protected persons".

1424. Finally, Israel has obligations under articles 146 and 147, as set out in chapter IV, which include an obligation to:

> bring before its courts persons alleged to have committed, or to have ordered to be committed ... grave breaches of the Fourth Geneva Convention, including wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

1425. The content of the international human rights obligations set out above has been clarified through a number of other sources, including the jurisprudence of the human rights treaty bodies (in this, particularly the Human Rights Committee), and various standards adopted under the auspices of the United Nations. The most relevant in respect of the facts outlined above are set out below.

1426. The permissible use of force by those exercising police powers is narrowly construed under international human rights law. The Code of Conduct for Law Enforcement Officials,[758] states that law enforcement officials (which include military authorities when exercising police powers) "may use force only when strictly necessary and to the extent required for the performance of their duty" (art. 3). Under the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials:[759]

> law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.

1427. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials are obliged, inter alia, to "ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment".

1428. Insofar as the events involve individuals who are human rights defenders, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) is also relevant,[760] in particular article 5 which affirms the right of everyone "to meet or assemble peacefully" for the purpose of promoting and protecting human rights and fundamental freedoms.

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[758] General Assembly resolution 34/169.

[759] Adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990.

[760] General Assembly resolution, 53/144, annex. Israel joined consensus when the Declaration was adopeted by the Assembly.

Conclusions

1429. The dispersal by Israeli security forces of demonstrations in the West Bank is prima facie in violation of the rights to freedom of expression and to peaceful assembly. Insofar as the protesters were protesting against the violation of human rights in Gaza, the activities of the security forces in dispersing demonstrations ran counter to the provisions of the Declaration on Human Rights Defenders.

1430. Regardless of whether the facts indicate that the above mentioned rights could be permissibly limited under the terms of the International Covenant on Civil and Political Rights, the methods and means of dispersal are questionable. The use of force described to the Mission against peaceful demonstrations is clearly prohibited in such situations, in particular the lethal use of tear gas canisters against demonstrators, of live ammunition (including .22 ammunition), and of snipers. It should be emphasized that the norms relating to the use of force by law enforcement officers outlined above, continue to apply even when the demonstrations are no longer peaceful, such as when stones are thrown, such as in the case of the Ni'lin demonstration of 28 December. The situation described by the witnesses to the killings in Ni'lin suggests that firearms were used when there was no threat to the life of the Israeli security forces or others under their protection. According to the witnesses, both the deceased were shot in the upper body and one of them in the back.

1431. On the basis of the facts obtained, the Mission finds that the use of firearms resulting in the death of demonstrators constitutes a violation of article 6 of the International Covenant on Civil and Political Rights as an arbitrary deprivation of life. Reports that Israeli security forces delayed the provision of medical aid to the injured in at least two demonstrations also suggest that violations occurred under the Fourth Geneva Convention and Principle 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

1432. The impermissible use of force that resulted in injury rather than death is in clear violation of a number of standards, including articles 7 and 9 of the International Covenant on Civil and Political Rights.

1433. The use of snipers and lethal ammunitions against demonstrators in situations where there is no threat to soldiers' lives or to the lives of others under their protection appears to indicate an intention, or at least recklessness, to cause harm to civilians, which may amount to wilful killing. Several of the incidents reported to the Mission raise concerns in this regard.

1434. The discrimination in the open-fire regulations for security forces dealing with demonstrations based on the presence of persons of a particular nationality, violates the principle of non-discrimination of article 2 of the International Covenant on Civil and Political Rights and article 27 of the Fourth Geneva Convention. These violations are all the more serious insofar as the regulations reflect a State policy based on discrimination.

3. Violence by Israeli security forces outside the context of demonstrations

1435. Reports on incidents such as the raid on Haris of March 2009 and the types of acts described by Colonel Virob, as well as those described in affidavits reviewed by the Mission raise concerns with regard to their compliance with article 32 of the Fourth Geneva Convention, article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture on the prevention of cruel, inhuman or degrading treatment or punishment.

4. Accountability

1436. The Mission emphasizes that effective investigation and, if appropriate, prosecution resulting from acts by its agents or by third parties involving deprivation of life, serious injuries and torture or inhuman or degrading treatment or punishment, and other possible violations of international humanitarian law and human rights law, is an obligation of the State of Israel. The Mission is concerned that the facts before it point to a failure by Israel to do so with regard to acts committed against Palestinians as reported above.

5. Conclusions

1437. The Mission is alarmed at both the reported increase in settler violence over the past year and the failure of the Israeli security forces to prevent settler attacks against Palestinian civilians and their property.

1438. The Mission is also gravely concerned at the increased use of force, including the use of lethal force, in response to demonstrations, and at the generalized violence of security forces against Palestinians living under occupation in the West Bank. Of particular concern is the apparent and systematic lack of accountability for acts of violence committed by Israeli security forces against Palestinian civilians.

1439. While the filming of incidents has led to the exposure of particular grave incidents of violence, the Mission is also concerned about violence that may have occurred out of sight gone unreported.

1440. In the opinion of the Mission, a line has been crossed, what is fallaciously considered acceptable "wartime behaviour" has become the norm. Public support for a more hard-line attitude towards Palestinians generally,[761] lack of public censure and lack of accountability[762] all combine to increase the already critical level of violence against the protected population.

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[761] As stated by a number of interviewees, such as Sarit Michaeli during a telephone interview, 5 August 2009.

[762] Michael Sfard, a prominent Israeli human rights lawyer, concludes in an article entitled "The price of internal legal opposition to human rights abuses", in which he reviews 35 years of human rights practice in Israel, "by lodging petitions to the Israeli High Court, human rights lawyers act as public relations agents of the occupation by promoting the notion that Palestinian residents have a recourse to justice."

XXI. DETENTION OF PALESTINIANS IN ISRAELI PRISONS

1441. According to estimates, as at 1 June 2009, there were approximately 8,100 Palestinian "political prisoners" in detention in Israel, including 60 women and around 390 children.[763] Most of these detainees are charged or convicted by the Israeli military court system that operates for Palestinians in the West Bank. The most common convictions are for stone-throwing. Being a "member of an illegal organization" is another common charge.[764] All but one of the Israeli prisons holding Palestinians from the Occupied Palestinian Territory are located inside Israel.[765]

1442. As at June 2009, of all the Palestinians held by Israel for reasons related to the occupation, 512 were held without charge or trial, of whom 12 were held under the Israeli Unlawful Combatants Law and 500 as "administrative detainees".[766, 767]

1443. The military courts system has been specifically set up by Israel to deal with Palestinians from the Occupied Palestinian Territory, while Israeli citizens living or otherwise present in the West Bank, if arrested, are dealt with under the Israeli civilian legal system. The Palestinian Authority is not allowed to arrest or detain Israeli citizens.[768]

1444. It is estimated that during the past 43 years of occupation, approximately 700,000 Palestinian men, women and children have been detained under Israeli military orders.[769] Israel argues that these detentions are necessary on grounds of security.

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[763] Estimates vary. The Mission is using figures provided by Addameer, Prisoners Support and Human Rights Association at 1 June 2009. Its General Director, Ms. Sahar Francis, explained at the public hearing in Geneva on 7 July 2009 that its statistics were based on monthly figures published by the Israeli prison authority and on its own monthly visits to detention facilities in Israel. The organization also attempted to collect direct information from the prisoners. Providing exact statistics was difficult as these figures changed daily, with new arrests and releases. She mentioned, for example, that in 2008, the Israeli military arrested more than 4,000 people, so the average was around 300 per day. Addameer defines as "political prisoners" those prisoners detained in relation with the occupation, as opposed to detainees suspected or convicted of crimes/offences unrelated to the occupation.

[764] Ms. Sahar Francis, testimony at the public hearing, Geneva, 7 July 2009.

[765] See "Yesh Din Petitions HCJ: Stop holding Palestinian detainees inside Israel. Yesh Din, along with the Association for Civil Rights in Israel (ACRI) and HaMoked: Center for the Defence of the Individual, filed a petition to the HCJ on March 25, 2009 demanding that prisoners and detainees who reside in the West Bank not be held in facilities within Israel, and that arraignment hearings for such detainees also not be held in courts outside the West Bank". See also, for instance, *Backyard Proceedings*.... See also http://www.hamoked.org/. See also Lisa Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (University of California Press, 2005).

[766] Figures provided by Addameer for 1 June 2009.

[767] The original military order dealing specifically with administrative detention is Military Order No. 1226. Subsequent amendments to it have each received different numbers. The most recent is: Order regarding Administrative Detentions (Temporary Order) [Combined version] (Judea and Samaria) (No. 1591), 2007. See also Addameer, "Administrative detention in the Occupied Palestinian Territory: A legal analysis report", November 2008.

[768] The Palestinian-Israeli Interim Agreement on the West Bank and Gaza Strip, annex IV. Protocol Concerning Legal Affairs, art. I.

[769] A/HRC/7/17.

1445. Due process rights for Palestinians in the Israeli military court system are severely limited. Military Order No. 378, which is the main source regulating detention and trial, allows for a Palestinian detainee from the Occupied Palestinian Territory, including children as young as 12, to be held for up to eight days before being brought before a military judge (Israeli detainees must be brought before a judge within 48 hours). Moreover, Palestinian detainees can be held for up to 90 days without access to a lawyer (compared to 48 hours for Israeli detainees).[770] Palestinian detainees can be held for up to 188 days before being charged (an Israeli detainee must be charged within 30 days).[771]

1446. Accusations of torture and other ill-treatment during arrest, interrogation and detention are common, while the court system is criticized for the use of coerced evidence.[772] It is also alleged that complaints about the ill-treatment of detainees rarely lead to investigations or to prosecution, let alone conviction.[773] The Israeli military court system treats Palestinian children as adults from the age of 16.[774] Israeli citizens, however, are considered adults only from the age of 18.

1447. Palestinian prisoners are reportedly held in substandard detention facilities (for example, Ktziot prison houses prisoners in tents) with very limited access to health care and education.[775] Detention inside Israel also means that many detainees do not receive family visits, as their relatives are prohibited from entering Israel (see chap. XXII).

1448. During the Israeli military operations in Gaza, scores of Gazans were detained by the Israeli armed forces. A portion of those were taken to prisons inside Israel, where some remain at the time of writing. This is discussed in chapter XV.

A. Issues linked to Israel's December-January military operations in Gaza

1. Differential treatment of Gaza prisoners

1449. After its disengagement from Gaza in August 2005, Israel ceased to apply its military orders to Gaza and began to prosecute Gaza detainees under domestic criminal law. In June

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[770] Articles 78c and d of Military Order No. 378 "Order Concerning Security Directives" and the Israeli Criminal Procedure (Powers of Enforcement – Detention) Law 1996.

[771] See also, for instance, *Backyard Proceedings*.... See also http://www.hamoked.org.

[772] In its review of Israel in May 2009, the United Nations Committee against Torture expressed concern inter alia at the "numerous, ongoing and consistent allegations" of the use of methods of interrogation contrary to the Convention (CAT/C/ISR/CO/4). See also the United Against Torture coalition's three "Alternative Reports" to the Committee, September 2008; United Against Torture Report, April 2009; examples of torture practised in the briefing by PCATI and the World Organisation against Torture to the Committee (April 2009); Amnesty International's report to the Committee.

[773] PCATI, "No defence: Soldier violence against Palestinian detainees", Periodic Report, June 2008, p. 38; see also Yesh Din's Accountability Project statistics: http://www.yesh-din.org/site/index.php?page=criminal3&lang=en.

[774] See Military Order No. 132.

[775] On child detainees, see below; on female detainees, see, for instance, Addameer, "In need of protection: Palestinian female prisoners in Israeli detention", November 2008.

2006, the Knesset passed a law[776] which alters existing Israeli criminal law due process guarantees by, for example, allowing a detainee to be held incommunicado for 21 days (after an initial appearance before a judge within 96 hours).[777]

1450. The Law does not discriminate. However, in practice, it is applied only to Palestinian suspects, whether Palestinians from the Occupied Palestinian Territory or Palestinian citizens of Israel. According to estimates submitted to the Knesset's Constitution, Law and Justice Committee by the head of the investigations unit of the General Security Services concerning the applicability of the Law, "over 90 per cent of detainees (to whom this Law was applied) were from the Gaza Strip, but there were cases of detainees who are not from the Gaza Strip such as East Jerusalem and the Arab-Israeli… who are Israeli civilians."[778]

1451. The Law was extended in January 2008. In January 2009 a petition submitted to the Israeli High Court of Justice by ACRI, PCATI and Adalah was heard. The Court criticized many aspects of the law, but the Government argued that it had secret materials that explained why such a law was necessary. In March 2009, the Court decided, on the basis of the secret evidence provided by the State, that the restrictions imposed by the Law were legal and proportionate.[779] In protest against the Court's use of secret evidence to determine the constitutionaiity of the Law, the human rights organizations withdrew their petition.[780]

(a) Unlawful Combatants Law

1452. The Israeli Internment of Unlawful Combatants Law 2002 provides for the indefinite detention of "foreign" nationals.[781] It offers a lower level of protection than the Law described above. In addition, it provides for a lower burden of proof and a higher threshold for judicial review.[782] In its submission to the Committee against Torture, the United Against Torture coalition of NGOs concludes that "an examination of its provisions suggests that the goal behind the law is to allow Israel to hold suspects as hostages who can be used as bargaining chips in future negotiations".

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[776] Criminal Procedure (Enforcement Powers – Detention) (Detainee Suspected of Security Offence) (Temporary Order) Law 2006.

[777] Compared to detainees held under the regular criminal procedural law, who have to be brought before a judge within 24 hours, or 48 hours, as per the Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism commented, on 5 July 2006, following the adoption on 27 June 2006 by the Knesset of Law 5765 – 2006 "Criminal Procedure (Enforcement Powers – Detention) (Detainees Suspected of Security Offences) (Temporary Provision)": "The law still does not provide all the necessary procedural safeguards for individuals detained for security reasons. In particular, the law provides that an individual may be held in detention for up to 96 hours before being brought before a judge and may not be present in court when a decision on the extension of the detention is made during the period when he is barred from contact with a legal counsel. In addition, while the provisions on access to legal counsel have not been worsened by this new law, the 21 days of detention without access to legal counsel authorized by the detention law currently in force remain incompatible with international human rights law" (A/HRC/4/26/Add.1).

[778] Quoted in the petition submitted by ACRI, PCATI and Adalah to the High Court of Justice, *The Public Committee against Torture et al.* v. *Minister of Justice et al.*, case No. 2028/08.

[779] ACRI and Partners, "Revoke law severely limiting due process rights", press release, 4 January 2009.

[780] ACRI, "Illegal decision by HCJ Judges to hear classified GSS evidence", press release, 24 March 2009.

[781] According to Adalah's data, the Law has been applied only to Gazans in the past six months, see "New data on Palestinian prisoners incarcerated in Israeli prisons", *Adalah's Newsletter*, vol. 62, July 2009.

[782] Mission correspondence with HaMoked, 22 July 2009.

1453. According to this Law, a person is designated an "unlawful combatant" by the Chief of General Staff. The definition the Law gives to the concept of "unlawful combatant" is:

> a person who has participated either directly or indirectly in hostile acts against the State of Israel or is a member of a force perpetrating hostile acts against the State of Israel, where the conditions prescribed in article 4 of the Third Geneva Convention of 12th August 1949 with respect to prisoners-of-war and granting prisoner-of-war status in international humanitarian law, do not apply to him (art. 2).

1454. The amendments made to the Law in July 2008, which included lengthening the time detainees can be held before they must be brought before a judge and before they must be allowed access to a lawyer, were challenged and upheld on appeal. Israel's Court of Criminal Appeals considered the Law constitutional and consistent with international humanitarian law.[783]

1455. Detention under this Law does not require admission of guilt or the existence of evidence acceptable as part of fair trial standards. According to Al-Mezan, "this law essentially licenses the military to hold individuals arbitrarily and indefinitely, on the basis of assumed rather than proven guilt that they are conducting direct or indirect activities that could harm the security of Israel or are affiliated to groups working to harm the security of Israel."[784]

(b) Gaza and the ICRC Family Visits Programme

1456. On 6 June 2007, the Israeli authorities suspended the ICRC Family Visits Programme in the Gaza Strip, effectively barring all means of communication between Gazan prisoners and the outside world.[785] Before the new arrests of Gazan residents during Israel's latest offensive in the Gaza Strip (see chapter XV), the ban affected approximately 900 prisoners and their families. In June 2009, ICRC called for the ban to be lifted.[786]

1457. According to Addameer, the timing of the decision to ban family visits coincided with factional fighting in the Gaza Strip which was followed by Hamas' seizing of control, a party which Israel does not recognize and defines as a "terrorist" organization. Therefore, the decision to suspend the programme appears to be a form of collective punishment intended to coerce Palestinians to respond to Israel's demands in terms of Palestinian leadership.[787] On 17 June 2008, Adalah filed a petition on behalf of Gazan prisoners' families, Al-Mezan and the

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[783] Supreme Court sitting as the Court of Criminal Appeals, *A and B* v. *State of Israel*, Judgement of 11 June 2008.

[784] "Al-Mezan calls for release of all detainees held by Israel and especially those categorized as 'unlawful combatants' in contravention of international law and human rights principles", 26 March 2009.

[785] Palestinian detainees are not normally given access to telephones or the Internet.

[786] ICRC, "Gaza: families should be allowed to resume visits to relatives detained in Israel", news release, 10 June 2009.

[787] Addameer, "The Palestinian prisoners of Israel", fact sheet, February 2009.

Association for the Palestinian Prisoners, challenging the legality of the ban on visits.[788] At the time of writing, this petition remained pending.[789] In October 2008, the Government of Israel submitted arguments to the Supreme Court to suggest that the State is not obliged to permit families from Gaza to visit their relatives incarcerated in Israeli prisons.[790]

1458. In addition, during the December-January military operations in Gaza, Adalah filed a petition demanding that Gazan prisoners should be allowed to use the telephone to contact family members. Not allowing this, Adalah argues, violates detainees' right to dignity and their right to family life, and "transforms their imprisonment to a humiliating and degrading experience that contradicts international norms and conventions, in particular the Universal Declaration of Human Rights."[791] According to Adalah, the Prison Authority replied that they allowed each detainee to use the telephone once. Some prisoners confirmed to Adalah that they had been allowed to use the telephone, but others said that they were not allowed to do so on the grounds that they did not present a certificate proving that a close relative had passed away during the offensive.[792]

2. Increase in children from the West Bank arrested and detained during or after the military operations in Gaza

1459. The Mission received information that during the Israeli military operations in Gaza the numbers of children from the West Bank detained by Israel increased. According to Defence for Children International – Palestine Section, the figures for January and February were 389 and 423, compared with 327 and 307 the previous year and a monthly average of 319 in 2008. Many of these children were reportedly arrested on the street and/or during demonstrations.[793] Defence for Children International also found that their average age changed: for the 12–15 age range, the percentage is usually 23; in January–February 2009, it was 36.[794] In January–March, it represented 69 children in the Israeli military courts. As of 20 June 2009, eight of these children were released without charge, while among the 61 charged, 47 were sentenced and 14 are still awaiting trial.[795]

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[788] Adalah, "Adalah, Al Mezan and the Association for the Palestinian Prisoners petition Supreme Court demanding that Palestinians from Gaza be permitted to visit their relatives incarcerated in Israeli prisons", press release, 17 June 2008.

[789] Mission correspondence with Adalah, 2 August 2009.

[790] Adalah, "State to Supreme Court: Israel not obliged to permit families from Gaza to visit their relatives incarcerated in Israeli prisons", press release, 27 October 2008.

[791] Adalah: "Adalah to [Attorney General] and Prison Service: Prisoners from Gaza incarcerated in Israel must be allowed to use telephones to check on their family members", press release, 31 December 2008.

[792] Mission correspondence with Adalah, 2 August 2009.

[793] Defence for Children International – Palestine Section, "DCI concerned by increase in arrests of West Bank children", statement, 17 January 2009. In the first two weeks of January 10 Palestinian children were brought before Israeli military courts in pretrial hearings, while the normal monthly average is 10-15. Many of these children were arrested from the street and/or during demonstrations."

[794] Submission to the Mission. See also "DCI concerned by sharp increase in detention of child", statement, 11 March 2009.

1460. Defence for Children International also found that there was a change in the percentages of children charged with particular offences in the first three months of 2009: in 2008, 27 per cent of children had been charged with throwing stones, as opposed to 61 per cent in the period covered by the report. "During OCL, the army didn't want to lose control of the West Bank, so they came down like a tonne of bricks on demonstrations." It concludes "The fact that many of these children were younger than the average child detainee and the fact that the majority were charged with minor offences suggest that this increase is the result of children's participation in a high number of demonstrations in the West Bank during Operation Cast Lead, and the increased use of force, including mass arrest, by Israeli authorities to suppress and discourage these protests."[796]

Number of Palestinian children in Israeli detention at the end of each month (2008)[797]

Year/Month	*Jan*	*Feb*	*Mar*	*Apr*	*May*	*Jun*	*Jul*	*Aug*	*Sep*	*Oct*	*Nov*	*Dec*
2008	327	307	325	327	337	323	324	293	304	297	327	342
2009	389	423	420	391	346	355	-	-	-	-	-	-

Note: These figures are not cumulative.

1461. One of the cases recorded by Defence for Children International is summarized as follows:

> **Ahmad Q.: 15-year-old boy arrested on 1 January 2009 and accused of throwing stones.** On 1 January 2009, Ahmad was protesting against the war in Gaza near Qalandiya checkpoint. He was arrested by soldiers and dragged 100 metres to a jeep. He was slapped and kicked, had his hands tied with plastic cords and he was blindfolded. He was transferred to Atarot for interrogation, made to sit outside in the cold until 4 a.m., transferred to Ofer prison, and then to prisons inside Israel. He was charged with throwing stones and sentenced to four and a half months in prison and fined NIS 1,000.

1462. The Israeli operations in Gaza caused a wave of demonstrations that did not end with the operations. Child detentions continued to be high in February and March, with the high percentage of children charged with stone-throwing indicating that they were detained during demonstrations. Defence for Children International reports two incidents of mass arrests of children after demonstrations in January and March 2009, including one in the village of Haris, where the Israeli armed forces entered the village at around midnight and rounded up about 90 children, detaining them in a school for almost a day, before finally arresting four of them.[798] The same incident was referred to in the British media and included testimony by Col. Itai Virob commander of the Kfir Brigade:

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[795] Submission to the Mission, p. 4. Defence for Children International – Palestine Section estimates that it represents 30-40 per cent of children appearing before Israeli military courts.

[796] Mission meeting with Defence for Children International, 3 July 2009. On the increased use of force by the Israeli military in the West Bank, see chap. XX.

[797] Defence for Children International – Palestine Section. These numbers are essentially taken up by West Bank ID holders. Palestinian children (and adults) with Jerusalem ID are generally processed by civilian Israeli courts. The numbers do not include children from Gaza. (Mission interview with Gerard Horton of Defence for Children International, 24 July 2009.)

> The worst beatings were in the bathrooms, he said. "The soldiers who took [detainees] to the toilet just exploded [over] them with beatings; cursed them with no reason. When they took one Arab to the toilet so that he could urinate, one of them gave him a slap that brought him to the ground. He had been handcuffed from behind with a nylon restraint and blindfolded. He wasn't insolent, he didn't do anything to get on anyone's nerves... [it was] just because he's an Arab. He was something like 15 years old."[799]

1463. On 6 March 2009, the President of Defence for Children International wrote to the Israeli Minister of Justice, Daniel Friedmann, seeking an explanation for the sharp increase in the number of Palestinian children being detained by Israel and notified the United Nations Committee on the Rights of the Child of these developments. At the time of writing, there had been no response.[800]

1464. In its report on Israel's detention of Palestinian children, Defence for Children International concluded that the abuse of Palestinian children by Israeli authorities is systematic and institutionalized.[801]

1465. In a statement issued in support of this report, UNICEF, WHO, OHCHR and local and international child protection agencies (together the 1612 Working Group on Grave Violations against Children) stated that, "Israeli military courts violate many basic fair trial rights according to international humanitarian and human rights law… For example, in almost all cases, the primary evidence used to convict children is a confession obtained through coercive interrogations carried out in the absence of a lawyer. The most common charge made against children was stone-throwing (about 27 per cent), which carries a maximum sentence of 20 years. .... With the potential for harsh sentences, approximately 95 per cent of cases end in the child pleading guilty, whether the offence was committed or not."[802]

1466. A former Israeli military commander told the BBC that Palestinian youngsters are routinely ill-treated by Israeli soldiers while in custody. The BBC website item included a video of a young Palestinian boy being arrested at night. Col. Efrati, who had left the army five months previously, said: "I never arrested anyone younger than nine or 10, but 14, 13, 11 for me, they're still kids. But they're arrested like adults. Every soldier who was in the Occupied Territories can tell you the same story. The first months after I left the army I dreamed about kids all the time. Jewish kids. Arab kids. Screaming."[803] He added, "Maybe [the kid is] blindfolded for him not to see the base and how we're working... But I believe maybe we put the blindfold because we don't want to see his eyes. You don't want him to look at us - you know, beg us to stop, or cry in front of us. It's a lot easier if we don't see his eyes."[804]

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[798] Submission to the Mission, p. 6.

[799] *The Independent*, "Bound, blindfolded and beaten – by Israeli troops", 9 June 2009.

[800] Submission to the Mission.

[801] Defence for Children International, *Palestinian Child Prisoners: The systematic and institutionalised ill-treatment and torture of Palestinian children by Israeli authorities* (June 2009).

[802] Statement available at: http://www.unicef.org/oPt/1612_STATEMENT_JUNE__9.pdf. The Working Group is chaired by UNICEF and includes OCHA, OHCHR, UNRWA, WHO, Save the Children Alliance, Al-Mezan Centre for Human Rights, B'Tselem, Defence for Children International – Palestine Section and PC HR.

3. Members of the Palestinian Legislative Council

1467. In September 2005, i.e. some months before the Palestinian Legislative Council elections, the Israeli military conducted a two-day arrest campaign in which 450 persons affiliated with the political parties Hamas and Islamic Jihad were detained. These individuals had been involved in either, or both, the municipal elections or the Council elections. Most were kept in administrative detention and many were released just before or after the Palestinian Legislative Council elections on 25 January 2006. Some candidates were elected while in detention. A number of those released were subsequently rearrested.[805]

1468. Hamas had taken part in municipal elections in 2005 and in Council elections in mid-2005. While Hamas is considered an unlawful organization by Israel,[806] its candidates participated under a list named "Change and Reform Bloc", underlining the main election pledge of reforming the system. Not all candidates and elected persons on that list were members of Hamas; some independent candidates joined the list, including a number of Palestinian Christians.[807]

1469. Israel had not banned the Change and Reform Bloc from participating in the elections, which were supported by the international community.[808] Reportedly, Israel had agreed the list of proposed candidates for the elections with the Palestinian Authority[809] and facilitated voting on the day.[810] However, the mass arrests in September 2005 hampered campaigning and organization, and candidates of all parties were banned by Israel from campaigning in Jerusalem. The Mission met Dr. Mustafa Barghouti, a member of the Council for the Palestinian National Initiative, who reported being arrested and beaten while attempting to campaign for the elections in Jerusalem.[811]

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[803] BBC News, "Israeli troops accused of abuse", 5 August 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/8186522.stm.

[804] BBC News, "Israeli troops 'ill-treat kids'", 6 August 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/8186905.stm.

[805] Addameer, "The arrest and detention of Palestinian Legislative Council Members", fact sheet, available at: http://addameer.info/?p=503.

[806] See State of Israel - Defence Ministry: List of Declarations and Orders, available in Hebrew at: http://www.mod.gov.il/pages/general/pdfs/teror.pdf. Hamas was declared a "terrorist group" by Israel on 22 June 1989 (applicable in Israel) and in the Occupied Palestinian Territory on 26 February 1996.

[807] "The arrest and detention…".

[808] See, for instance, European Union "Javier SOLANA, EU High Representative for the CFSP, welcomes announcements by Israeli and Palestinian leaders on Palestinian Authorities elections", statement, 16 January 2006.

[809] Mission interview with Mr. Fadi Qawasme, 6 July 2009.

[810] Reportedly, by opening Israeli post offices in East Jerusalem as polling stations and transporting the ballot boxes to the Palestinian Authority's counting offices at the end of the day. Mr. Fadi Qawasme, testimony at the public hearing in Geneva, 3 July 2009, and Mission interviews with Ms. Sahar Francis, 22 July 2009, and with Dr. Omar Abd al-Razeq, member of the Council, 16 July 2009.

1470. Nevertheless, the "Change and Reform" list won the elections, gaining 74 seats out of 132, which is said to have come as a surprise to all involved. The tenth Government was inaugurated on 20 March 2006 and included a number of non-Hamas ministers.[812]

1471. As referred to in chapters II and XVIII, on 24 June 2006, an Israeli soldier, Gilad Shalit was captured by Palestinian armed groups based in Gaza. The Government of Israel held the Palestinian Authority fully responsible for his capture "with all this implies". It made it clear that it would "take all necessary actions" to bring about his release and that "no person or organization will have immunity at this time".[813] On 29 June, the Israeli armed forces arrested some 65 members of the Palestinian Legislative Council, mayors and ministers. Most were Hamas members.[814] They were taken from their homes during the night. Interviewees described situations where up to 20 jeeps surrounded a Council member's home or where their homes were ransacked, and computers and papers taken.[815]

1472. According to Mr. Fadi Qawasme, lawyer to most of the detained Council members, the members detained on 29 June were prevented from having access to lawyers for a week, during which time they were interrogated. Some refused to cooperate; others openly admitted that they were members of Change and Reform. Some were released; others were kept in detention and charged with "membership of a terrorist organization",[816] or held under administrative detention orders. The prosecution requested that all should be remanded in custody pending trial, a period which took two years. Mr. Qawasme protested against the charges on the grounds that members of the Council should have immunity from prosecution; that they did not recognize the jurisdiction of the court (those arrested should have come under the jurisdiction of the Palestinian Authority according to the Oslo Accords) and argued that Israel had accepted the participation of Change and Reform in the elections.[817]

1473. Also according to Mr. Qawasme, the Court initially accepted the arguments and proposed releasing all on bail. The prosecution appealed and rejected the lawyer's arguments, claiming that Israel had not allowed Hamas to participate in the elections, and that "Change and Reform" was in fact Hamas. In February 2007, a year after the election, Israel declared "Change and Reform" a prohibited organization.[818] All were held for at least two years and some were convicted of "membership of Change and Reform", or "standing in election on behalf of Change and Reform". The minimum sentence given to the Council members was 42 months, with longer sentences for higher-ranking members.

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[811] Mission meeting with Dr. Mustafa Barghouti, 3 July 2009.

[812] See Institute for Middle East Understanding, "Meet the new Palestinian Authority Cabinet", 20 March 2006, available at: http://imeu.net/news/article00764.shtml.

[813] Prime Minister's Office, "Political-Security Cabinet convenes", press release, 25 June 2006, available at: http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2006/06/spokekab250606.htm.

[814] Mr. Fadi Qawasme, testimony at the public hearing in Geneva, 3 July 2009, and PCHR, "Weekly report on Israeli human rights violations in the Occupied Palestinian Territory", No. 26/2006 (29 June-5 July 2006), available at: http://www.pchrgaza.org/files/W_report/English/2006/06-07-2006.htm.

[815] Mission interview with Dr. Mariam Saleh, member of the Council and former detainee, 27 July 2009.

[816] Prevention of Terror Ordinance No. 33 of 1948.

[817] Mr. Fadi Qawasme, testimony at the public hearing, Geneva, 3 July 2009.

(a) Arrest, interrogation and detention conditions

1474. The Mission interviewed three members of the Palestinian Legislative Council who were detained by Israel.[819] Dr. Mariam Saleh related how, on the night of her arrest, around 20-25 military jeeps surrounded her house and masked men entered the house by force. Having locked Dr. Saleh and her family on the balcony, they ransacked the house before putting her in a military jeep. They drove her to her office, which they entered by force and from which they took her computer hard disc and many papers. She was then taken to al-Maskobiya (an interrogation centre in Jerusalem), where she was held for a month. She reported being interrogated for three-day stretches from 8 a.m. to 5 a.m. the next morning. Dr. Saleh further reported that her son and husband were brought to the interrogation centre in order to pressure her into confessing that she was a member of Hamas.[820]

1475. The interviewees related that, as most members were in their fifties or sixties, detention was hard to cope with and a particularly humiliating experience.[821] They spoke of a lack of access to medical assistance and proper medication, of ailments worsening because of the dire detention conditions, of a lack of adequate food, and of specific dietary adjustment for a diabetic patient for instance. They further spoke of humiliation by prison guards (who initially found it amusing to have, for example, a minister as prisoner), of attempts to gain confessions by collaborators, of the use of stress positions and of sleep deprivation. They further reported extremely difficult transport conditions, being enclosed in a car with a dog, for example, or being shackled hands and feet inside a bus for 12 hours at a time with no water or access to a toilet. The trips from prison to court and back could take many days, with the bus stopping at a number of different prisons on the way picking up and dropping off passengers, and the detainees being tied up and crammed for lengthy periods despite some being elderly and in poor health. One interviewee reported having spent altogether about 350 days, "almost a year", on such multi-day trips.[822]

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[818] Change and Reform was declared an "unlawful association" by Israel on 22 February 2007 (applicable in Israel) and in the Occupied Palestinian Territory (by Israeli military order) on 22 July 2007.

[819] Dr. Mariam Saleh, Minister for Women in the 10th Palestinian Government, detained November 2007 and released June 2008; Dr. Omar Abd al-Razeq, Minister of Finance in the 10th Palestinian Government, detained 13 December 2005, released 13 March 2006, detained 29 June 2006, released 3 August 2008, detained 15 December 2008, released 28 April 2009; and WB/01, detained in 2007 and released in the past six months.

[820] Mission interview with Dr. Mariam Saleh, 27 July 2009. A PCATI report details the frequent use of family members to pressure detainees, despite an Israeli High Court decision banning the practice. PCATI, "Family matters: Using family members to pressure detainees under GSS interrogation", April 2008. See also B'Tselem, "Human rights organizations: Prohibit GSS use of family members to pressure interrogees", petition, 16 April 2008, available at: http://www.btselem.org/english/Press_Releases/20080416.asp.

[821] According to PCATI, even seemingly innocuous measures such as cuffing (both hands and feet) are used in a deliberate way. Painful shackling is done for invalid and irrelevant reasons, which include causing pain and suffering, punishment, intimidation, and illegally eliciting information and confessions. The practice of shackling may be used by the various authorities as a tool for dehumanizing Palestinian detainees subject to the control of the occupying Power. PCATI, "Shackling as a form of torture and abuse", Periodic Report, June 2009.

1476. Interviewees reported extremely limited family visits, with one being told his mother was not considered "immediate family" and not being allowed a visit from her for three years.[823]

1477. The former detainees interviewed by the Mission feared rearrest, at times had been rearrested, on the same charges, and reported trying to minimize their travel and public appearances.[824] One interviewee reported that, during his last detention, he had been given a two-year suspended sentence, which would take him past any prospective election date. He added that, in any case, no one could stand in these elections for Hamas or Change and Reform, since doing so had become punishable and subject to three years' imprisonment.[825] All interviewees also reported family and friends receiving threats and being harassed by Palestinian Authority security forces.[826]

1478. According to B'Tselem, Israeli officials have made public statements relating the arrests of the Council members to political goals:

> in an interview with [Associated Press] a few hours after the first wave of arrests, on 29 June 2006, Major-General Yair Naveh, OC Central Command, said that the decision to arrest senior Palestinian officials was made by the political echelon and that they would be released upon the release of Gilad Shalit. In an interview with the army radio station on 24 May 2007, the day that the second wave of arrests took place, the then Defense Minister, Amir Peretz, stated that "the arrest of those heads of Hamas is to show the military organizations that we demand that the firing stop."[827]

1479. The Inter-Parliamentary Union has recently adopted a number of resolutions protesting against the arrest and detention of the Palestinian parliamentarians, including those from the Change and Reform Bloc. It notes that the Council members were sentenced to much longer periods in detention than persons convicted of military action and that "clearly, the intention was to keep them in prison for the rest of their parliamentary term." It "considers that the rearrest of four Change and Reform parliamentarians following the failure of the negotiations regarding the release of Gilad Shalit and the simultaneous restrictions of the rights of political prisoners suggests that Israel is in fact holding the [Palestinian Legislative Council] members concerned as hostages."[828]

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[822] Mission interview with Dr. Omar Abd al-Razeq, 16 July 2009.

[823] Ibid.

[824] Mission interview with WB/01, 16 July 2009.

[825] Mission interview with Dr. Omar Abd al-Razeq, 16 July 2009.

[826] Mission interviews with Dr. Omar Abd al-Razeq, 16 July 2009, and Dr. Mariam Saleh, 27 July 2009.

[827] B'Tselem, "Detention of senior Palestinian officials – wrongful infringement of fundamental rights", press release, 1 August 2007.

[828] Resolutions adopted unanimously by its Governing Council at its 184th session (Addis Ababa, 10 April 2009), see http://www.ipu.org/conf-e/120/120.pdf.

(b) Associated measures

1480. In May 2006, the Israeli Minister of Interior at the time, Roni Bar-On, decided to revoke the permanent residency status (i.e. the right to reside in Jerusalem under Israeli law) of four Council members (including the then Minister of Jerusalem Affairs). The letter received stated "Pursuant to [the Law of Entry into Israel], you are deemed to be a resident in the State of Israel. You are obliged to pay allegiance to the State of Israel. Nonetheless, your actions prove otherwise and indicate that your allegiance is paid to the Palestinian Authority."[829] The members petitioned the Israeli High Court, while ACRI and Adalah submitted an amicus curiae brief, arguing that the Jerusalemites' reduction to permanent resident status of the city after it was annexed by Israel could not be removed. The human rights organizations argued that the residency status of the members was cancelled because the Government of Israel did not welcome the election result.[830] The petition was filed at the Israeli High Court of Justice contesting the status removal or de facto exile, in 2006, but it is still pending.[831] Potentially, a ruling that Jerusalem residency can be revoked on the basis of a lack of loyalty to Israel could have extremely far-reaching consequences for the Palestinian residents of occupied East Jerusalem. Until now Israeli law has allowed the revocation of Jerusalem residency rights only of Palestinians who are unable to prove that their "centre of life" is in Jerusalem.[832]

(c) Recent developments

1481. In January 2009, during the Israeli operation in Gaza, the Israeli armed forces once again arrested a number of Hamas leaders on 1 and 9 January 2009.

1482. Addameer comments "the timing of the waves of arrests indicates that the arrests were intended to put pressure on the Palestinian people and its leadership."[833] Interviewees have indicated that the arrest campaigns effectively work as deterrence. They report having family members, colleagues and employees arrested by both Israel and the Palestinian Authority.

1483. In March, two Council members and former detainees interviewed by the Mission reported that a group of detainees associated with Hamas were given mobile telephones and asked to meet as a group and to intervene in the negotiations surrounding the release of Gilad Shalit. According to the interviewees, detainees were gathered from different prisons for this meeting in Ktziot prison in the Negev. Some detainees were brought out of solitary confinement for this purpose, while solitary confinement is normally imposed because allowing these specific detainees to meet and speak with others is considered a security risk.[834] On this occasion, the group of senior Hamas detainees (Council members and other leaders) were asked to call other Hamas leaders in Gaza and Damascus to influence the negotiations over Gilad Shalit and the prisoner exchange. However, they decided not to cooperate, stating that they were not free to confer or negotiate from detention.[835]

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[829] Al-Haq, "Attacking democracy: Recent Israeli attacks on Palestinian democratic institutions", November 2006, available at: http://www.alhaq.org/pdfs/Attacking%20Democracy.pdf.

[830] Adalah, "Israeli Supreme Court: Members of the Palestinian Legislative Council whose Jerusalem residency status was revoked must be given an opportunity to submit applications to reinstate it".

press release, 17 September 2008.

[831] *Khalid Abu Arafeh et al. v. Minister of Interior*, case No. 7803/06.

[832] See B'Tselem, "Revocation of residency in East Jerusalem".

[833] "The arrest and detention…".

1484. According to Addameer, a few hours after Hamas declared an end to the negotiations for the release of Gilad Shalit, the Israeli armed forces conducted a series of raids into the West Bank towns of Nablus, Ramallah, Hebron and Bethlehem, and arrested four Council members, the former Deputy Prime Minister of the 10th Government, a university professor and a Hamas leader.[836] For PCHR these arrests "could be acts of pressure exerted by Israel on the Hamas leadership in order to resolve the case of captured Israeli soldier Gilad Shalit, and conclude the prisoner exchange."[837] Ms. Sahar Francis of Addameer commented:

> It is unthinkable that the Israeli Government first engages in a political process and negotiations with Hamas, and then kidnaps 10 political leaders, associated with the movement and uses them as bargaining chips. This is not only a form of collective punishment, which in itself is a violation of international humanitarian law, but also a politically counterproductive move.[838]

(d) The downgrading of Hamas prisoners' detention conditions

1485. On 18 March 2009, the Israeli Justice Minister, Daniel Friedmann, established a committee to "work to reduce privileges afforded Hamas and Islamic Jihad security prisoners".[839] He reportedly announced in the media that the downgrade was intended "to match [these prisoners'] conditions of incarceration to those of Gilad Shalit".[840] The Mission interviewed two former Hamas detainees who confirmed that from the end of March they had stopped receiving newspapers and books and had their "recreation" time reduced to 3 hours per day.[841] According to HaMoked, the decision to create the committee "establishes the use of a large group of prisoners as 'bargaining chips' until the resolution of a matter to which they have no connection and which they cannot influence."[842] According to Addameer, "on 29 March the Israeli Government accepted recommendations presented by a special Ministerial Committee aiming at downgrading detention conditions of prisoners identified with Hamas and Islamic Jihad."[843]

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[834] According to human rights organizations, some prisoners have been held in isolation from between five months to 23 years. Physicians for Human Rights – Israel and Addameer, "The sounds of silence: Isolation and solitary confinement of Palestinians in Israeli detention", July 2008.

[835] Mission interviews with WB/01, and with Dr. Omar Abd al-Razeq, 16 July 2009.

[836] Addameer, "Addameer condemns IOF's abduction of 10 political leaders", press release, 19 March 2009, available at: http://addameer.info/?p=934.

[837] PCHR, "PCHR condemns IOF acts of reprisal on Hamas affiliated political leaders in the West Bank", press release, 19 March 2009.

[838] "Addameer condemns…".

[839] "The team will include representatives of the Attorney General's office, the Israel Prison Service, the IDF and the ISA, and will work to reduce privileges afforded Hamas and Islamic Jihad security prisoners." Cabinet communique, 22 March 2009, available at: http://www.mfa.gov.il/MFA/Government/Communiques/2009/Cabinet_communique_22-Mar-2009.

[840] Quoted by HaMoked in its "Position paper regarding the proposal for downgrading the incarceration conditions of prisoners associated with Hamas", available at: www.hamoked.org.il/items/111330_eng.pdf.

(e) Effect of the detention of the Palestinian Legislative Council's members: disabling the legislative and enabling the executive

1486. The detention of the Council's members has meant that it has been unable to function for three years and no laws have been passed. According to ICHR, it has not been able to exercise its oversight function over the Government's administrative and financial performance, "whether through the questioning, granting/withholding confidence, or holding the Government accountable, or inquiry of finding the facts in cases of grave violations of Palestinian human rights during 2008."[844]

1487. Conversely, the executive authority in the West Bank has played a major role in legislative policymaking – where the Government has referred a number of laws to the President, and the President issued 11 decisions with the power of law in 2008.[845] The Palestinian Basic Law provides that a caretaker government may, in exceptional circumstances which cannot be postponed, issue decisions with the power of law; however these must be submitted to the Council at the first available session and be approved or cease to have power of law. ICHR argues that some of the laws issued by the President of the Palestinian Authority represent a retreat from the legal guarantees for the protection of fundamental rights and freedoms of Palestinian citizens (see chap. XXIII).

B. Legal analysis and conclusions

1488. The detention practices mentioned in the introduction to this chapter have been found by various United Nations bodies to be in violation of international human rights and humanitarian law. In the analysis that follows, the Mission has restricted itself to analysing the specific violations relevant to its mandate.

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[841] Note that these are normally paid for by the Palestinian Authority's Ministry of Detainees' and Ex-Detainees' Affairs. "Recreation time" is the time detainees are able to leave their cells and, as such, includes time spent in the showers, meal times, etc.

[842] "Position paper regarding the proposal…".

[843] Addameer, "The continuous violation of Palestinian political prisoners' rights", *public statement, 17 April 2009*, available at: http://addameer.info/?p=945.

[844] ICHR, *Fourteenth Annual Report*, p. 24.

[845] Ibid., p. 25.

1. The military court system and Israel's detention of Palestinians from the Occupied Palestinian Territory in general

1489. International law gives the occupying Power the right to detain members of the protected population both for criminal offences and for imperative security reasons (see below under "administrative detention"). According to international humanitarian law, as an exception to the preservation of legal conditions in the occupied territory, the occupying Power can "subject the population of the occupied territory to provisions which are essential to enable the occupying Power to fulfil its obligations under the present Convention" (article 64 of the Fourth Geneva Convention). It can establish military courts to prosecute local residents for violations of these provisions (art. 66), which should be "properly constituted, non-political", a requirement intended to prevent the use of such courts for political or racist persecution, and they should "sit in the occupied territory", a provision which is intended to ensure due process for detainees and accused persons brought before them.[846]

1490. Articles 67 to 75 of the Fourth Geneva Convention contain a number of fair trial guarantees the military courts should offer, including the right to choose a defence lawyer, who shall be able to visit freely (art. 72). However, based on information received by the Mission, even this most basic principle is not normally complied with in the Israeli military court system.

1491. Article 9 (3) of ICCPR requires anyone arrested or detained on a criminal charge to be brought promptly before a judge and to be brought to trial within a reasonable time or to be released. The provisions of Israeli Military Order No. 378 are not in line with this requirement.

2. The use of detention in the context of the Mission's mandate

1492. The detention of members of the Palestinian Legislative Council and their conviction for being members of a particular political party violate the prohibition on discrimination based on political belief, contrary to article 26 of ICCPR:

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status.

1493. In addition they violate article 25:

> Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors […].

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[846] Jean S. Pictet (ed.), *Commentary. The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva, ICRC, 1958), pp. 335-336.

1494. The Mission finds that the detentions, insofar as they were carried out in response to political events unrelated to the individual members detained, may amount to collective punishment, contrary to article 33 of the Fourth Geneva Convention:

> No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.
>
> [...]
>
> Reprisals against protected persons and their property are prohibited.

1495. The facts gathered by the Mission also indicate a violation of the right not to be arbitrarily detained as protected by article 9 (1) of ICCPR:

> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

3. Detention of children

1496. Article 76 of the Fourth Geneva Convention requires that proper regard should be paid to the special treatment due to minors in detention. The facts gathered by the Mission indicate that Palestinian minors are not given the special treatment due to them, in particular minors aged 16 and 17, who are treated as adults.

1497. Article 37 (b) of the Convention on the Rights of the Child provides that "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate time." This requirement appears to have been violated by the detention of children in large numbers during or following demonstrations.

1498. The detention of large numbers of children and others participating in demonstrations may also be contrary to the provisions of the Declaration on Human Rights Defenders relating to the protection of the right to protest against violations of human rights.

1499. Reports of ill-treatment of children by Israeli security forces, described above, indicate violations of article 37 of the Convention on the Rights of the Child.

4. Additional legal issues

1500. The removal of residency status (of the Council members from East Jerusalem) based on their (implied) refusal to pay allegiance to Israel constitutes a violation of article 45 of the Hague Regulations which provides that "it is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power," which is also part of customary international law.

1501. The removal of residency status could additionally amount to deportation, which violates the Fourth Geneva Convention, article 49. In addition, it violates the individual's freedom to choose his residency (article 12 of ICCPR), which, on the face of it, cannot be justifiably curtailed under the exceptions foreseen by article 12 (3). If such curtailment is based on political belief it is prima facie inconsistent with articles 2 (non-discrimination) and 19 (freedom of opinion) of ICCPR. In addition, the revocation could constitute an unlawful interference with family life, contrary to article 17, as well as the right to family life in article 23, where residency status revocation means the family can no longer live together as one unit.[847]

1502. The systematic discrimination, both in law and in practice, against Palestinians in legislation (including the existence of an entirely separate legal and court system which offers systematically worse conditions than that applicable to Israelis) and practice during arrest, detention, trial and sentencing compared with Israeli citizens[848] is contrary to ICCPR, article 2, and potentially in violation of the prohibition on persecution as a crime against humanity.[849]

5. Conclusions

1503. The Mission is concerned about the detention of children and adults on political grounds, in poor conditions and outside the occupied territory in violation of international humanitarian law. The Mission notes the very high number of Palestinians who have been detained since the beginning of the occupation (amounting to 40 per cent of the adult male population of the Occupied Palestinian Territory) according to a practice that appears to aim at exercising control, humiliating, instilling fear, deterring political activity and serving political interests.

1504. The Mission is equally concerned by the reports of coercion and torture during interrogations, trials based on coerced confessions or secret evidence, and the reportedly systematic and institutionalized ill-treatment in prisons.

1505. The Mission is particularly alarmed at the arrest and detention of hundreds of young children, and the rise in child detention during and following the Israeli military operations in Gaza. The ill-treatment of children and adults described to the Mission is disturbing in its seemingly deliberate cruelty.

1506. The legal instruments allowing for the indefinite detention of "unlawful combatants", as well as enshrining the deficient due process regimes, the differential treatment of Palestinian and Israeli prisoners (including the differential definition of a "child"), and the exemptions de facto allowing for harsher interrogation techniques raise concerns about the legal system being a part of this practice, rendering it deliberate and systematic.

1507. The Mission notes with concern the arrest and lengthy detention of democratically elected Palestinian parliamentarians, which appears to be a deliberate act to interrupt the democratic functioning and self-governance of Palestinians.

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[847] On the revocation of Jerusalem residency rights generally, see B'Tselem, http://www.btselem.org/English/Jerusalem/Revocation_of_Residency.asp.

[848] There is also discrimination between Jewish Israeli citizens and Palestinian Israeli citizens, in law and practice.

[849] Article 7 of the Rome Statute.

XXII. ISRAELI VIOLATIONS OF THE RIGHT TO FREE MOVEMENT AND ACCESS

1508. In the West Bank, Israel has imposed a system of interlocking measures, only some of which are physical barriers that restrict the movement and access of Palestinians within the West Bank. This includes movement between Jerusalem and the rest of the West Bank, between the West Bank and Israel, between the West Bank and Gaza and between the West Bank and the outside world and vice versa.

1509. Movement is restricted by physical obstacles, such as roadblocks, checkpoints and the Wall, but also by administrative measures, such as identity cards, permits, assigned residence, laws on family reunification and policies on the right to enter from abroad and the right of return for refugees. The restriction on the ability to move freely, without obstacle or delay, or without another person's authorization, is often perceived as a humiliating experience.[850]

1510. Restrictions include denial access, mainly to Jerusalem for all Palestinians except those who are designated by Israel as Jerusalem residents,[851] citizens of Israel and special permit holders[852]. Special permits are rarely granted.[853]

1511. Palestinians are denied access to areas expropriated for the building of the Wall and its infrastructure, for use by settlements,[854] buffer zones, military bases and military training zones,[855] and the roads built to connect these places. Many of the roads are "Israeli only"[856] and forbidden for Palestinian use.[857] An example of an "Israeli only" road is Road 443, between Tel Aviv and Jerusalem, which passes through the West Bank. Once a major Palestinian traffic artery serving 33 villages, this stretch of the road has now been turned into a highway that Palestinians are forbidden to use. A number of tunnels have been built under the road to enable access, but movement is still extremely restricted for the villagers.[858]

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[850] See the reports of Machsom Watch, a volunteer network of Israeli women who monitor checkpoints on a daily basis at www.machsomwatch.org/en. See also, "Ground to a halt: denial of Palestinians' freedom of movement in the West Bank", B'Tselem, August 2007 and the interview with Nadera Shalhoub-Kevorkian, on her book Militarization and Violence against Women in Conflict Zones in the Middle East, at www.opendemocracy.net/article/email/checkpoints-and-counter-spaces. Checkpoints are also sites of confrontation: see chap. XXI.

[851] Around 225,000 Palestinian with Jerusalem identity cards live in the part of Jerusalem between the Wall and the Green Line. A number of East Jerusalem areas and suburbs, however, now fall outside the Wall, such as Abu Dis, Kafr Aqab, and Shu'fat refugee camp. "Five years after the International Court of Justice advisory opinion: a summary of the humanitarian impact of the Barrier", Office for the Coordination of Humanitarian Affairs, July 2009.

[852] East Jerusalem Palestinians have identity cards showing their status as "permanent residents" of Israel. Palestinians living in the remainder of the West Bank have West Bank identity cards and need to apply for special permits to enter East Jerusalem.

[853] Shawan Jabarin, General Director of Al-Haq, Geneva public hearing, 6 July 2009 (by videoconference).

[854] Palestinians are normally not allowed to enter settlements, except for those employed in settlement industrial zones or in the settlements, who normally require permits. For a comprehensive overview of the settlement project, see "Land Grab, Israel's settlement policy in the West Bank", B'Tselem, September 2008; and "Access Denied: Israeli Measures to Deny Access to Land around Settlements", B'Tselem, May 2002.

[855] This applies to much of the Jordan Valley. See "The Eastern Border: Palestinians of the Jordan Valley", Jordan Valley Solidarity, 15 February 2009., available at www.jordanvalleysolidarity.org/index.php?option=com_content&task=view&id=166&Itemid=9The Mission met with the Mayor of Al-Akaba village in the Jordan Valley, Mr. Sami Sadeq, who gave an account of his experience of living in a village surrounded by military training grounds, 3 July 2009.

[856] Access also includes foreign citizens.

1512. Movement between Gaza and the West Bank for Palestinians is virtually impossible.

1513. Generally speaking, Israelis can and do travel freely around the West Bank, with the exception of the main Palestinian cities, which are off limits to Israelis, according to Israeli law.[859]

1514. The Mission has reviewed claims that foreign passport holders, whether or not of Palestinian origin, can and are regularly denied entry to the West Bank by Israeli border authorities.[860] According to a report of June 2009 received by the Mission, in the first six months of 2009, the number of entry denial cases reported increased relative to the last quarter of 2008, "raising concerns that Israel is again escalating its policy of arbitrary entry denial".[861] Recent reports criticize the new "Palestinian Authority only" visas issued by Israel to foreign citizens.[862] These practices severely limit the ability of international humanitarian workers and human rights defenders to carry out their activities.[863]

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[857] See "Checkpoints, physical obstructions, and forbidden roads", B'Tselem, at www.btselem.org/english/Freedom_of_Movement/Checkpoints_and_Forbidden_Roads.asp; and "Road 443, West Bank road for Israelis only", B'Tselem at www.btselem.org/English/Freedom_of_Movement/Road_443.asp. See also Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference).

[858] Other access restrictions are more difficult to grasp, such as access with usage restriction; for example on land and in urban areas where no building or agriculture is permitted, or where environmental pollution has made the land unusable. See testimony of Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference), and "Road 443, West Bank road for Israelis only", B'Tselem; "The prohibited zone: Israeli planning policy in the Palestinian villages in area C", Bimkom, at http://eng.bimkom.org/_Uploads/23ProhibitedZone.pdf; See also "Foul play: neglect of waste water treatment in the West Bank", B'Tselem, www.btselem.org/English/Publications/Summaries/200906_Foul_Play.asp.

[859] Israeli Military Order 378 "Order on the Security Provisions (Judea and Samaria) (No. 378) 1970 – Proclamation regarding Closing and Area (Prohibition of Entry and Stay) (Israelis) (Area A), issued 5 October 2000, signed by General Itzhak Eitan.

[860] See the reports published by the Campaign on the Right to Entry at www.righttoenter.ps/. On 16 December 2008, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, was denied entry into Israel: see, www.righttoenter.ps/images/Press_Release_Richard_Falk.pdf and A/HRC10/20.

[861] Campaign for the right to enter the Occupied Palestinian Territory, situation update report, September 2008-June-2009.

[862] "Israel toughens entry for foreigners with West bank ties", Amira Hass, *Ha'aretz*, 12 August 2009.

[863] The practices also restrict the movement of foreign passport holders of Palestinian origin; see "Why is Israel limiting movement of Palestinian-Canadian businessman?", Amira Hass, *Ha'aretz*, 19 August 2009.

A. Movement restrictions affecting the Mission's work

1515. At the public hearing in Geneva on 6 July 2009, Mr. Shawan Jabarin of Al-Haq reported that tens of thousands of Palestinians today are subject to a travel ban imposed by Israel, preventing them from travelling abroad. Mr. Jabarin, whom the Mission heard in Geneva by way of videoconference, had been subject to such a travel ban since he became the director of Al-Haq, the West Bank's oldest human rights organization. Mr Jabarin challenged his travel ban in the Israeli High Court after he was prevented from travelling to the Netherlands to receive a human rights prize, but the ban was upheld on the basis of 'secret evidence'.[864] Mr. Jabarin believed that the ban was imposed as punishment. On 3 July 2009, the Mission also spoke with Khalida Jarrar, a member of the Palestinian Legislative Council for the Palestinian Liberation Front Party, by telephone conference, as she too was unable to travel out of the West Bank because of an Israeli-imposed travel ban. Ms Jarrar, who prior to her election to the Palestinian Legislative Council in 2006 directed the prisoners' rights organization Addameer, told the Mission that she had not been allowed to travel out of the West Bank since attending the Human Rights Defenders Summit in Paris in 1998.[865]

1516. The Mission has already referred to the fact that the Palestinian Minister for Justice, Dr. Ali Khashan, was unable to leave the West Bank to meet the Mission in Amman, Jordan he had been prevented from crossing the border.[866]

B. Movement and access and the Israeli military operations in Gaza

1517. The Mission received reports that, during the Israeli offensive in Gaza, movement restrictions in the West Bank were tightened. For several days, Israel imposed a "closure" on the West Bank, a restrictive measure in addition to those already in place. Given that it is an ad hoc measure, people cannot plan their movements around it.

1518. It was also reported to the Mission that, during and following the operations in Gaza, Israel tightened its hold on the West Bank through more expropriation, an increase in house demolitions, demolition orders and permits granted for homes built in settlements, and increased exploitation of the West bank's natural resources. Various policies and decisions implemented in the first six months of 2009 relating to settlements, and Jerusalem's demography, affected the access and movement of Palestinians, while increasing the overall control by Israel over the West Bank.

1519. Following the operations in Gaza, the Mission received reports that Israel had amended the regulations determining the ability of persons with a Gaza identity card to move to the West

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[864] For the Israeli High Court decision of 10 March 2009 (Al-Haq translation), see www.alhaq.org/pdfs/Shawan-abarin-v.pdf; see also "Travel ban on Al-Haq General Director upheld: once again, the Israeli judiciary demonstrates its subservience to the military and security authorities", Al-Haq Press Release, 11 March 2009; "Dutch Foreign Minister condemns travel ban imposed by Israel on Al-Haq General Director", statement of the Foreign Ministry of the Netherlands, 11 March 2009; A/HRC/11/41/Add.1.

[865] For example E/CN.4/2006/95/Add.1.

[866] See chap. I.

Bank, and vice versa, further entrenching the separation between the people of the West Bank and Gaza.

C. West Bank closures during the Israeli operations in Gaza

1520. Information received by the Mission showed that, in addition to the everyday restrictions on movement and access during the Israeli operations in Gaza, Israel implemented a full closure of the West Bank for six days.[867] During a closure, Palestinians with West Bank identity cards (see below) and valid permits to enter East Jerusalem or Israel are prevented from doing so.[868]

1521. The closures affected thousands of workers, students, people needing to have access to Palestinian hospitals in East Jerusalem, worshippers and those visiting family and friends. Furthermore, according to reports received by the Mission, the number of checkpoints in the West Bank, including in East Jerusalem, was increased during the operations, most being "flying" checkpoints (ad hoc checkpoints operating for anything between one hour and the duration of the operations in Gaza).[869] According to Shir Hever, an economist from the Alternative Information Centre, each day of closure costs the Palestinian economy $ 4.5 million and 276 jobs and drives 646 people below the poverty line.[870]

1522. The Office for the Coordination of Humanitarian Affairs reports that, on 2 January 2009, the Israeli army prevented males aged between 16 and 50 from crossing Huwara checkpoint to travel south.[871] Huwara checkpoint is the main checkpoint on the main north-south route in the West Bank and lies between the cities of Jenin, Tulkarm, Qalqilia and Nablus in the north, and Ramallah, Jericho, Bethlehem and Hebron in the middle and south. Closing Huwara checkpoint effectively prevents Palestinians from this region from going south, as there are no other accessible roads.

1523. In addition, according to the Office for the Coordination of Humanitarian Affairs, in January 2009, Israel declared the area between the Wall and the Green line in Hebron, parts of Salfit, Ramallah, and in between the Wall and the Jerusalem municipality borders a "closed military area", with serious consequences for the Palestinian population.[872] Prior to this, access to land beyond the Wall (the so-called "seam zone", between the Wall and the Green Line[873]) was already restricted as access required prior coordination with the Israeli army. The new measures meant that land owners had to provide proof of ownership (which is difficult to obtain) and apply for visitors' permits to be able to have access to their land. Applications for permits by farm labourers who are not land owners were routinely rejected. According to Mr. Shawan Jabarin, human rights monitors are not granted permits either.[874] Fewer than 20 per cent of those who used to farm their lands in 67 localities in the northern West Bank, which had been declared closed previously, are now reportedly granted permits. Those who do obtain permits face long waiting times, restricted gate opening hours, physical searches and restrictions on the kinds of farming equipment allowed to pass. In addition, thousands of people reside in the areas now or previously declared "closed military zones". They now require permits to live in their own homes and must often pass through gates in order to have access to work, health care, education and other services. The area declared a closed military zone in January includes the Jerusalem suburb of Dahiet al-Barid. According to the Applied Research Institute of Jerusalem, around 14,000 Palestinians in this suburb stand to lose their Jerusalem residency status as well as municipal services.[875]

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[867] The dates were, 2, 3, 9,10, 16 and 17 January 2009.See Office for the Coordination of Humanitarian Affairs Weekly Report for 1-8 January 2009, 9-15 January and 16-20 January.

[868] Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference).

[869] Meeting with Al-Haq, and the Palestinian Centre for Human Rights, 2 July 2009.

[870] Submission to the Mission by Shir Hever, Alternative Information Centre,.

[871] Office for the Coordination of Humanitarian Affairs Weekly Report, 1-8 January 2009.

[872] Office for the Coordination of Humanitarian Affairs, The Humanitarian Monitor No. 33, January 2009.

[873] "Between Fences: The Enclaves Created by the Separation Barrier", Bimkom, at http://eng.bimkom.org/Uploads/4GderotEng.pdf . For a general picture see Office for the Coordination of Humanitarian Affairs Closure Map, June 2009, at www.ochaopt.org/documents/ocha_opt_closure_map_west_bank_june_2009.pdf; some 85 per cent of the route of the Wall lies inside the West Bank, the area between the Wall and the Green line amounts to 8.5 per cent of the West Bank (including East Jerusalem) See "Five years after the International Court of Justice advisory opinion: A summary of the humanitarian impact of the Barrier", Office for the Coordination of Humanitarian Affairs, July 2009.

D. New measures to formalize the separation of Gaza and the West Bank

1524. The Mission received reports about measures that further formalize the separation of Gaza and the West Bank. Following HaMoked's petition to the High Court, a new Israeli Ministry of Defense procedure has been revealed detailing the very strict conditions under which a resident of the Gaza Strip may change her or his residency to that of the West Bank.[876] The procedure of 8 March 2009states:

> Against the backdrop of the security/political situation in the Gaza Strip it has been decided on State level to limit the movement of residents between the Gaza Strip and the Judea and Samaria area to the necessary minimum, so that for all practical purposes entry of residents of Gaza into the Judea and Samaria areas shall only be allowed in the most exceptional humanitarian cases." … "the Deputy Minister of Defence…established that in every case involving the settlement of Gaza residents in the Judea and Samaria Area one should adopt the most restrictive policy, which is derived a fortiori from the general policy of restricting movement between the two Areas. The Deputy Minister clarified that a family relationship, in and of itself, does not qualify as a humanitarian reason that would justify settlement by Gaza residents in the Judea and Samaria Area.

1525. In the terms of the procedure, as reviewed by the Mission, one of the situations envisaged by the regulations, is where

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[874] Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference).

[875] "14,000 Palestinian Jerusalemites stand to lose their residency rights", Applied Research Institute, 5 January 2009 at http://www.poica.org/editor/case_studies/view.php?recordID=1802; for the issue of municipal services in East Jerusalem generally, see "Life in the garbage: a report on sanitation services in East Jerusalem", Association for Civil rights in Israel, June 2009 at www.acri.org.il/pdf/sanitationeng.pdf.

[876] Translation of the procedure by Gisha and HaMoked available from the website www.gisha.org/UserFiles/File/Legal%20Documents%20/WB_Gaza_Full_Procedure-Eng.pdf.

> A minor resident of Gaza who is under 16 years old, where one of his parents, who was a resident of Gaza, passed away and the other parent is a resident of the Judea and Samaria Area and there is no other family relative who is a resident of Gaza who is able to take the minor under his wings. In the event that it is necessary, the nature and scope of the existing relationship with the parent who is a resident of the Judea and Samaria Area shall be examined in relation to the degree, nature and scope of the relationship with other family relatives in Gaza (para. 10 B).

1526. Furthermore, according to paragraph 15 of the procedure, a successful application is subject to periodic renewal and a seven-year "naturalization" period, after which there is an examination "as to whether to grant a permit of settlement in the Judea and Samaria Area and a change of the registered address in the copy of the file of the Palestinian population registry, which is in the possession of the Israeli side".

1527. In the reports reviewed by the Mission, HaMoked and Gisha call this regulation an additional measure in a deliberate Israeli policy to deepen the separation between the West Bank and Gaza "in the pursuance by Israel of political goals at the expense of the civilian population, in blatant violation of international humanitarian law." It also "undermines the possibility of a two state solution", and "contradicts a long list of Israeli undertakings to conduct negotiations for the establishment of an independent, viable Palestinian State, including an explicit commitment in the Oslo Accords to preserve the status of the West Bank and Gaza Strip as a 'single territorial unit'".[877]

E. Movement and access, current situation

1528. According to information available the Mission, in the past eight months certain measures by the Government of Israel have improved freedom of movement in certain places, in particular access to the cities of Nablus, Tulkarm, Hebron and Ramallah. For example, the permit requirement was removed for vehicles entering Nablus, two junctions near Hebron were opened and a checkpoint was removed outside Tulkarm. In Ramallah, a "fabric of life"[878] alternative route was opened for access from the West.[879]

1529. United Nations sources observe, however, that during this time the restrictions on Palestinian traffic and the ease of Israeli and settler traffic in the West Bank have become entrenched. Checkpoints have also been expanded and some temporary checkpoints have become more permanent (for example with gates instead of earth mounds). In addition, the improvement or opening of "fabric of life" roads alternative roads to closed main roads still necessitates the confiscation of land.

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[877] Gisha and HaMoked position paper, available at www.gisha.org/UserFiles/File/publications_/WB_Gaza_Procedure-PositionP-Eng.pdf.

[878] The concept of "fabric of life" was introduced by the Israeli army to denote alternative roads for Palestinians who are no longer allowed to use the "Israel only" main roads; see "Alternative roads for Palestinians", B'Tselem, at www.btselem.org/english/Freedom_of_Movement/Alternative_Roads_for_Palestinians.asp.

[879] Office for the Coordination of Humanitarian Affairs, West Bank Movement and Access update, June 2009, at www.ochaopt.org/documents/ocha_opt_movement_access_2009_june_english.pdf.

1530. The Office for the Coordination of Humanitarian affairs maps 613 physical obstacles, including 68 staffed checkpoints and 541 unstaffed obstacles such as roadblocks. This number excludes the 84 obstacles blocking Palestinian access and movement within the Israeli-controlled area of Hebron city ("H2"), 63 crossing points in the Wall and an average of 70 random (or "flying") checkpoints deployed every week since the beginning of 2009.[880] In addition to the road obstacles, the Wall continues to be built; large areas between the Wall and the Green Line (the "seam zone") have been declared closed to Palestinians.[881]

1531. Harsh military measures, such as prolonged curfews on individual villages in the northern West Bank, have further restricted movement, and approximately 28 per cent of the West Bank is now declared a closed military zone with recent stricter enforcement, especially affecting farmers and herders.

1532. The Mission has also received reports about the recent introduction by Israel of measures aimed at "modernizing" the access and movement restrictions which, by making monitoring and recording of movement of individuals easier, would have the effect of consolidating the restrictions. The measurers include the introduction of magnetic cards for use in automated checkpoints, the privatization of checkpoints and access gates and the computerization of certain checkpoints on or near the Green Line as of 1st May 2009.[882] The measures have raised a concern that permits for politically active individuals will be more frequently cancelled. In addition, considering the current open debate in international law on the liability of private security contractors, the privatization of checkpoints raises concerns about accountability.[883]

1533. Therefore, while there have been some (albeit limited) positive developments in the period between September 2008 and March 2009, the measures taken during this and previous periods indicate a further entrenchment of the system of movement and access restrictions, with the result that "the space available for Palestinian development is increasingly constrained".

1534. The Mission notes that it is misleading to look at the freedom of movement of the Palestinians of the West Bank without considering where they can actually. For example, recent reports have raised the Mission's concern about broader policies leading to the "silent transfer" of Palestinians out of Jerusalem. The first six months of 2009 saw a dramatic rise in demolition orders, including demolitions of entire villages and neighborhoods,[884] and approvals for new settlement construction in both East Jerusalem and the rest of the West Bank.

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[880] Compared with a weekly average of 60 for the first four months of 2008, and 87 per week for June to September (Office for the Coordination of Humanitarian Affairs closure update, 30 April 2008 – 31 September 2008, at http://www.ochaopt.org/documents/ocha_opt_closure_update_2008_09_english.pdf).

[881] In the Salfit, Ramallah, Bethlehem and Hebron governorates. See Office for the Coordination of Humanitarian Affairs, West Bank Movement and Access update, June 2009, at www.ochaopt.org/documents/ocha_opt_movement_access_2009_june_english.pdf.

[882] Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference). See Stop the Wall press release at http://stopthewall.org/latestnews/1931.shtml.

[883] See "The Privatization of Checkpoints and the Late Occupation", Eilat Maoz at www.whoprofits.org/Article%20Data.php?doc_id=705.

F. Jerusalem: accelerating the "silent transfer"

1535. In May 2009, the *New York Times* reported that the Office Israeli Prime Minister of Israel and the Israeli-defined Jerusalem municipality, in cooperation with the Jerusalem Development Authority and settler organizations, were implementing an eight-year "confidential" plan to create a string of nine parks, pathways and sites, incorporating new or existing settlements in and around East Jerusalem. The NGO Peace Now concluded that "the completion of the Israeli plan will change dramatically the map of East Jerusalem and might prevent a permanent status agreement and a compromise in Jerusalem."[885]

1536. In a report reviewed by the Mission, the Association for Civil Rights in Israel stated that, in Jerusalem "discrimination in planning and building, expropriation of lands, and minimal investment in physical infrastructure and government and municipal services - these are concrete expressions of an Israeli policy designed to secure a Jewish majority in Jerusalem and push Palestinian residents outside the city's borders."[886]

1537. In a report of April 2009, addressing "the failure of the Israeli authorities to provide adequate planning for Palestinian neighborhoods", the Office for the Coordination of Humanitarian affairs states that "some 60,000 Palestinians in East Jerusalem … are at risk of having their homes demolished by the Israeli authorities. This is a conservative estimate and the actual number may be much higher."[887]

G. New settlements, land expropriation and the demolition of villages in Area C

1538. In reports reviewed by the Mission, Peace Now stated in March 2009 that the Ministry of Housing and Planning was planning a further 73,000 settlement homes to be built in the West

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[884] For example, in the Jordan Valley, and a neighborhood in Jerusalem (al-Bustan in Silwan). On 4 June 2009, a village was almost entirely destroyed in the Jordan Valley. "Israeli authorities demolished 13 residential structures, 19 animal pens, and 18 traditional *taboun* ovens in the Bedouin community of Khirbet ar Ras al Ahmar in the Jordan Valley. A water tank, tractor, and trolley were also confiscated Eighteen households were displaced, including at least 67 children". Office for the Coordination of Humanitarian Affairs Protection of Civilians report (27 May-2 June 2009)

[885] "Parks fortify Israel's claims to Jerusalem", *New York Times*, 9 May 2009.

[886] The report concludes that "for decades, the legal possibility of issuing building permits for new construction on East Jerusalem has been practically non-existent. (…) The discrimination is clear, its purpose to limit legal construction in the Palestinian areas and constrict the space available for the development of Arab neighborhoods. The City's Outline Plan, 'Jerusalem 2000', approved in 2006 (…) perpetuates the discriminatory policies by failing to provide adequate housing units, employment sources, and infrastructure in East Jerusalem". "The state of human rights in East Jerusalem - Facts and Figures", Association for Civil Rights in Israel report, May 2009.

[887] "Special Focus: the planning crisis in East Jerusalem: understanding the phenomenon of 'illegal' construction", Office for the Coordination of Humanitarian Affairs, April 2009. The United Nations Special Coordinator, Robert Serry, stated that these "actions harm ordinary Palestinians, heighten tensions in the city, undermine efforts to build trust and promote negotiations, and are contrary to international law and Israel's commitments", 22 April 2009.

Bank.[888] According to Peace Now, the building of 15,000 of these homes had already been approved, and, if all the plans are realized, the number of settlers in the occupied Palestinian territory will double.[889]

1539. Construction works on Maskiyot, a new settlement, were reportedly commenced in the Jordan Valley as of May 2009.[890] At the same time, Palestinians in the Jordan Valley and more generally in Area C are at risk of displacement. On 26 January 2009, the High Court of Justice of Israel rejected a petition submitted by the Association for Civil Rights in Israel and Rabbis for Human Rights on behalf of the Palestinian residents of Khirbet Tana, "effectively allowing the State to destroy all of the village's houses but one, despite the lack of viable planning alternatives for the area's Palestinian residents".[891] In a recent report reviewed by the Mission, Bimkom concluded that the Israeli Civil Administration applied "a deliberate and consistent policy in Area C with the goal of restricting Palestinian construction and development and limiting its spatial dispersion".[892]

H. Connecting the dots

1540. According to reports reviewed by the Mission, aside from the settlements themselves, much new infrastructure is being built to service the settlements, including roads, rail and tram lines, tunnels and waste dumps. Notable examples of these are the Jerusalem ring road (eastern section) a four-lane highway which will connect Israeli settlements in East Jerusalem and run through Palestinian neighborhoods, requiring the confiscation of many dunums[893] of Palestinian land and demolitions of homes and businesses;[894] and the Jerusalem light rail project and train line between Tel Aviv and Jerusalem part of which will run through the West Bank.[895]

1541. Observers have noted that Israeli control over the movement and access of the West Bank Palestinians is necessary to maintain control over the West Bank's land and natural resources.

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[888] "Ministry of Housing's plans for the West Bank", Peace Now, March 2009 available at www.peacenow.org.il and on the website of the Israeli government at www.govmap.gov.il.

[889] An increase of approximately 300,000 people, based on an average of four people in each housing unit. According to the report, there are plans to double the size of some settlements, including Beitar Illit, Ariel, Givat Ze'ev, Maaleh Adumim, Efrat and Geva Binyamin, and approximately 19,000 housing units are planned in settlements that are beyond the constructed path of the Wall.

[890] "A new settlement starts to be constructed: Maskiyot" Peace Now, 18 June 2009. See also "Israel planning mass expansion of West Bank settlement bloc" *Ha'aretz*, 27 February 2009 and "Secret Israeli database reveals full extent of illegal settlement", *Ha'aretz*, 1 February 2009.

[891] Press release, Association for Civil Rights in Israel, 5 February 2009.

[892] "The Prohibited Zone: Israeli planning policy in the Palestinian villages in Area C", Bimkom.

[893] One dunum is equivalent to one square kilometre.

[894] "Carving up the Palestinian capital: The Israeli ring road around occupied East Jerusalem", Negotiations Support Unit of the Palestine Liberation Organization fact sheet, February 2008, available at www.nad-plo.org/facts/jerusalem/ringroad.pdf. See also the campaign by the Al-Quds University Human Rights Clinic atwww.stoptheringroad.net/q3.php and the briefing paper by Adalah available at www.adalah.org/features/land/Briefing%20Paper%20on%20the%20Eastern%20Ring%20Road.doc .

[895] Peace Now "An objection to expansion of Israel Railway's Jerusalem-Tel-Aviv line" Peace Now, 11 May 2009

Easing Palestinian access on alternative roads and the removal of some checkpoints would allow Israel to offer "transportational", rather than territorial contiguity. At the same time, full Israeli access through the separate road system and full control over the border allow for a level of continuous population control. The increased movement and access limitations recently implemented by Israel in the West Bank, would seam to share with the military operations of December 2008 - January 2009 Israel's objective of "getting rid of Gaza in order to consolidate its permanent hold on the West Bank".[896]

I. Legal analysis and conclusions

1542. The occupying Power may restrict the right to free movement in certain circumstances, but it must safeguard the fundamental rights of the protected people at all times. Any movement restriction, to be lawful under international humanitarian law, however, must be necessary and proportionate to the harm caused to the protected people.

1543. The right to freedom of movement is enshrined in article 13 of the Universal Declaration of Human Rights, and in article 12 of the International Covenant on Civil and Political Rights. When the right is restricted, it affects the exercise of any number of other rights, including those set forth in the International Covenant on Economic, Social and Cultural Rights, such as the right to work (art. 6), the right to protection of family life (art. 10), the right to an adequate standard of living (art. 11), the right to health (art. 12) and the right to education (art. 13).

1544. If the decision to restrict movement is based on a person's belonging to an ethnic or national group, this constitutes unlawful discrimination contrary to articles 1 and 2 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights and article 75 of Additional Protocol I to the Geneva Conventions, which is part of customary international law. Israel allows Israeli citizens to move around the West Bank including the settlements, relatively freely. According to B'Tselem, the Israeli military has openly admitted that the restrictions on Palestinians are there to enable Jewish settlers to move about freely.[897]

1545. Where checkpoints become a site of humiliation of the protected population by military or civilian operators, this may entail a violation of article 75 (2) (b) of Additional Protocol I to the Geneva Conventions (which is part of customary international law), which outlaws "outrages upon personal dignity, in particular humiliating and degrading treatment".

1546. Settlements are contrary to article 49 (6) of the Fourth Geneva Convention.[898] Furthermore, they violate Palestinian property rights and the prohibition on the occupying Power of changing the nature and legal status of the Occupied Palestinian Territory (art. 55 of the Hague Regulations), may constitute direct discrimination against Palestinians, besides causing restriction of movement, hindering economic and social development, and access to health, education and social services. In addition, the extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly, amount to a "grave breach" of article 147 of the Geneva Convention. The Wall, which, to the extent it is built inside the West Bank is contrary to international law,[899] the de facto annexation of the parts of the West Bank that fall on the "Israeli side" of the Wall (9.5 per cent of the West Bank),[900] five years since the advisory opinion of the International Court of Justice that the Wall must be dismantled, now amount to the acquisition of territory by force, contrary to the Charter of the United Nations.[901]

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[896] Mission interview with Jeff Halper, Director of the Israeli Committee against House Demolition, 6 August 2009

[897] "Restrictions on Movement", B'Tselem at www.btselem.org/English/Freedom_of_Movement/.

[898] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, advisory opinion, [2004], International Court of Justice, rep. 136, para. 120; Security Council resolutions 904 (1994), 465 (1980), 452 (1979), 446 (1979) and General Assembly resolutions ES10/6, ES10/14, and 61/118and the Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention,, Geneva, 5 December 2001.

1547. From the facts ascertained by or available to it, the Mission believes that the movement and access restrictions to which West Bank Palestinians are subject are disproportionate to any military objective served, in general, particularly in light of the increased restrictions during and to some extent since the military operations in Gaza. The restrictions do not safeguard the fundamental rights of those protected as required by international humanitarian law and international human rights law.

1548. From the facts available to it, the Mission believes that in the movement and access policy there has been a violation of the right not to be discriminated against on the basis of race or national origin The Mission is concerned about the steps taken recently to formalize the separation of Gaza from the West Bank, and, as such, of two parts of the Occupied Palestinian Territory. The Mission is also concerned that the increasingly entrenched array of movement and access restrictions, both physical and non-physical, amount to a deliberate policy of closely controlling a population in order to make use of areas of its land. From the facts available, the Mission believes that these restrictions constitute violations of fundamental rights.

1549. Insofar that movement and access restrictions, the settlements and their infrastructure, demographic policies with regards to Jerusalem and Area C, and the separation of Gaza from the West Bank prevent a viable, contiguous and sovereign Palestinian State from being created, they are in violation of the *jus cogens* right to self-determination.

XXIII. INTERNAL VIOLENCE, TARGETING OF HAMAS SUPPORTERS AND RESTRICTIONS ON FREEDOM OF ASSEMBLY AND EXPRESSION BY THE PALESTINIAN AUTHORITY

1550. The Mission has received allegations of violations relevant to its mandate committed by the Palestinian Authority in the period under inquiry. These include violations related to the treatment of (suspected) Hamas affiliates by the Preventive Security Service, the Military Intelligence and the General Intelligence, such as their unlawful arrest and detention, and ill-treatment of political opponents while in detention. Other allegations are the arbitrary closure of charities and associations affiliated with Hamas and other Islamic groups[902] or the revocation and non-renewal of their licences,[903] the forcible replacement of board members of Islamic schools and other institutions and the dismissal of Hamas affiliated teachers.[904]

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[899] The International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, [2004] I.C.J. Rep. 136.

[900] Office for the Coordination of Humanitarian Affairs, "Five years after the International Court of Justice Advisory Opinion: A summary of the humanitarian impact of the Barrier", July 2009.

[901] Paragraph 121 of the advisory opinion states that the "Court considers that the construction of the wall and its associated régime create a "fait accompli" on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation".

1551. There have also been allegations of the use of excessive force and the suppression by Palestinian security services of demonstrations, particularly those in support of the population of Gaza during the Israeli military operations.[905] On these occasions the Palestinian Authority's security services allegedly arrested many individuals[906] and prevented the media from covering the events, at times breaking cameras or erasing footage.[907] The Mission also received allegations of harassment by Palestinian security services of journalists who expressed critical views of the Palestinian Authority.[908]

1552. The Mission noted the reluctance of some of the residents of the West Bank it approached to speak openly about these issues. A number of individuals expressed concern that there might be repercussions if they did so.[909]

1553. The Mission also received reports that highlight the lack of parliamentary oversight over acts and decisions by the executive. As noted in chapter XXIII, the arrest and detention by Israel of several members of the Palestinian Legislative Council has effectively curtailed such parliamentary oversight.[910] The executive has passed decrees and regulations[911] to enable it to continue its day-to-day operations. Palestinian human rights organizations have argued that this has resulted in the use of the security apparatus to suppress political opposition and of military courts to ignore any judicial challenge to arbitrary detention on political grounds.[912]

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[902] See, for instance, Al-Haq, "Overview of the internal human rights situation in the Occupied Palestinian Territory", June 2009; International Crisis Group, "Palestine divided", Middle East Briefing, No. 25, 17 December 2008, p. 12; ICHR, *Fourteenth Annual Report* (2008), pp. 152–168, PCHR, *Annual Report 2008*; Mission telephone interview with Al-Haq, 15 July 2009.

[903] PCHR, *Annual Report 2008*, pp. 93-96; *The Financial Times*, "West Bank 'tsunami' hits Hamas and allies", 29 July 2009.

[904] "Overview of the internal human rights situation…"; "Palestine divided…", p. 12; ICHR, *Fourteenth Annual Report*, pp. 103–111, PCHR, *Annual Report 2008*, p. 101; Mission telephone interview with Al-Haq, 15 July 2009.

[905] OCHA, "Protection of civilians weekly reports", 24–30 December 2008, 1-8 January 2009, 9-15 January 2009, 16–20 January 2009; Mission telephone interview with Al-Haq, 15 July 2009; Mission telephone interview with WB/02, 16 July 2009; Mission meeting with ICHR, Amman; ICHR, "Monthly report on violations of human rights in the PNA-controlled territory", January 2009; Al-Haq, "Field report", January–March 2009.

[906] Mission telephone interview with WB/02, 16 July 2009; Mission telephone interview with Al-Haq, 15 July 2009. Arrests reportedly include members or supporters of Islamic parties but also left-wing student leaders.

[907] "Monthly report on violations…", January 2009; Palestinian Center for Development and Media Freedoms (MADA), "Violations of media freedoms in OPT during January 2009"; Mission telephone interview with Muhammad Jaradat, 16 July 2009.

[908] See, for instance, MADA, *Annual Report: 257 Violations of Media Freedoms in OPT during 2008*, which includes affidavits.

[909] Al-Haq notes in its "Field report" for January–March 2009 that there is a general reluctance on the part of West Bank Palestinians to testify on intra-Palestinian violence. Few complaints are filed, both because complainants have little confidence that the authorities will taken action (Mission telephone interview with WB/02, 16 July 2009) and because they fear negative repercussions.

[910] Mission interview with Ms. Khalida Jarrar, 30 July 2009; ICHR, *Fourteenth Annual Report*, p. 24.

1554. The Mission asked the Palestinian Authority for information about the above allegations; however its reply does not address these issues.[913]

A. Crackdown by the Palestinian Authority on Hamas and other Islamic parties

1. Arrest and detention by the security forces

1555. Before the Israeli military operations in Gaza, domestic human rights organizations were already reporting a practice of arbitrary arrest by the Palestinian Authority of members and (suspected) supporters of Hamas in the West Bank.[914] The practice has reportedly continued. According to ICHR, over 400 persons arrested by the Palestinian Authority's security forces "primarily for reasons of political affiliation" were in detention, as of 31 May 2009. ICHR has confirmed the 400 cases individually through prison visits, but states that the total number is probably closer to 700.[915] The human rights NGO Al-Haq estimates that over 800 persons were being held as at mid-July 2009.[916] The Mission has asked the Palestinian Authority, inter alia, to confirm the numbers of persons held in detention by its Preventive Security Force, Military Intelligence and General Intelligence, and the legal basis for their detention, but has received no reply on this issue.

1556. The Palestinian Authority has a court system similar to most others, with civilian criminal and civil courts and a court of appeal, and military courts, which have jurisdiction over military matters.[917]

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[911] The executive has passed decrees to grant the Minister for Local Government the right to dissolve the local council or dismiss its head (Presidential Decree No. 9) and to limit the right to strike for civil servants (Decree No. 5) (ICHR, *Fourteenth Annual Report*, pp. 25–26) and see PCHR, "PCHR has reservations about regulations adopted in the context of ongoing political fragmentation", position paper, 23 June 2009.

[912] ICHR, *Fourteenth Annual Report*; Al-Haq, "Al-Haq calls upon the President of the Palestinian National Authority and the Higher Judiciary Council to restore exclusive civil jurisdiction over civilians", urgent call, 3 September 2008; ICHR, "The detention of civilians by Palestinian security agencies with a stamp of approval by the Military Judicial Commission", Special Report No. 64, December 2008; "Overview of the internal human rights situation…".

[913] Reply of the Palestinian Authority to the Mission, 5 August 2009.

[914] Al-Haq, "Field report", July–September 2008, and Mission interview with Al-Haq, 15 July 2009; PCHR, "PCHR gravely concerned over the deterioration of the human rights situation in the Occupied Palestinian Territory", press release, 30 July 2008.

[915] Mission telephone interview with ICHR, 30 July 2009.

[916] Mission telephone interview with Al-Haq, 15 July 2009. ICHR states that only a very small number of non-Hamas affiliated detainees are held by the Palestinian Authority's security forces (Mission telephone interview with ICHR, 30 July 2009).

[917] See, for instance, Birzeit University Institute of Law, "Legal system and legislative process in Palestine".

1557. The Mission has received reports that arrests are often carried out without an arrest warrant or with a warrant issued by the Military Judicial Commission (a military court) rather than by a civilian court.[918] The Amended Basic Law of 2003, article 101 (2), states that military courts "shall not have any jurisdiction beyond military affairs". On 30 August 2008, the Palestinian High Court of Justice confirmed that the Military Attorney General[919] and the Military Judicial Commission had no jurisdiction over civilians. In addition, in the past year many of its decisions have supported this view in individual cases relating to the arrest or detention of civilians. However, these civilian court rulings have mostly been ignored by the security forces and the military judiciary.[920]

1558. Information received by the Mission suggests that detainees held by the security forces do not know when they will be released, normally without being charged and tried, rarely have access to a lawyer or are allowed family visits.[921]

2. Torture and other ill-treatment

1559. Several Palestinian human rights organizations have reported that practices used by the Palestinian Authority's security forces, particularly the Preventive Security Force, Military Intelligence and the General Intelligence service, against several people in the West Bank amount to torture and cruel, inhuman and degrading treatment and punishment. They have documented examples of such treatment during detention through testimonies of victims, some of whom have political affiliations with Hamas.[922] They have also reported a number of deaths in detention to which it is suspected that torture and other ill-treatment may have contributed or which they may have caused.[923]

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[918] ICHR, *Fourteenth Annual Report*.

[919] ICHR refers to this person in English as the "Chief of the Military Judicial Commission".

[920] "Al-Haq calls upon the President…"; "The detention of civilians…"; "Overview of the internal human rights situation…".

[921] ICHR, *Fourteenth Annual Report*; "The detention of civilians…".

[922] Various affidavits have been collected by Al-Haq, Addameer, PCHR and ICHR. For instance, Al-Haq's testimony taken from Marwan Khaled Saleh al-Khalili reports ill-treatment he received at the hands of the Preventive Security force, which included the "shabeh", a stress position involving a very small, slanted chair, to which he was bound for four days. He suffered two strokes and permanent injury, according to his testimony. He was released after being asked to sign a pledge to leave his work for the Hamas Social Committee (Al-Haq affidavit No. 4364/2008.). In another of Al-Haq's testimonies, relating to October 2008, Muhammad Suleiman Mahmoud Dagher reports on the torture, death threats and beatings he and another man received at the hands of an unknown Palestinian Authority security agency. At one point during his detention, he was made to stand on a chair while his interrogator placed a rope, which was suspended from the ceiling, around his neck. The interrogator then reportedly said "if you do not confess, we will kill you". He also had a gun put to his head and threatened (Al-Haq affidavit No. 4460/2008). An additional example of abuse and intimidation is recorded by a lawyer of the Addameer Prisoner Support and Human Rights Association, relating to a visit of a detainee who was also a lawyer. "They told him that when he will get out from the prison he will be handicapped and that 'you are no better than Majd al-Barghouti' [who died in General Intelligence Service (GIS) detention in February 2008] and also told him he should consider himself from now on fired from his work, and that his membership at the Bar association will be suspended. The interrogator reportedly said to X, 'don't you know that the President of the Bar Association is from Fatah?'" (affidavit received by the Mission from Addameer).

1560. According to these organizations, complaints of such practices have not been investigated and because of the failure of the competent authorities to oversee these agencies or hold them accountable for their practices, impunity for serious violations of human rights prevails. One organization asserts that, "Silence, connivance and a failure to prevent or oversee such acts all manifest a definitive presumption of the consent or acquiescence of public officials to inflict such pain and suffering."[924]

3. Freedom of association

1561. There have been reports that freedom of association, which is protected by the Palestinian Basic Law, has been violated with respect to several organizations, on the basis of their political views and affiliations. Hamas-affiliated organizations have been particularly targeted since 2008.[925] On 14 July 2008, PCHR issued a report describing the "interference of the Ministry of Interior and Security Forces in election affairs of the Women's Arab Union." The report described how a committee consisting of Ministry of Interior officials, Preventive Security and General Intelligence staff banned five candidates from standing for election to the board of the Union.[926] It has reportedly become common for the Palestinian Authority to disapprove of the appointment of board members with specific political affiliations, to request their replacement with its own nominees, and to refuse the (re-)registration of associations that do not comply with this request.[927] Human rights organizations are reportedly not exempt from interference by the Palestinian Authority's security forces. The Mission heard from one organization's staff member that he and his colleagues received physical threats from the security forces. Furthermore, reported complications in administrative processes, such as delays in the opening of bank accounts and in carrying out financial transactions, result in additional hindrances to the work of these organizations.[928]

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[923] PCHR press releases: "PCHR calls for disclosure of circumstances of Palestinian death in custody in Jericho", 7 October 2008; "PCHR calls upon the Government in Ramallah to investigate death of a detainee in Jenin Preventive Security Service Headquarters", 9 February 2009; "Detainee dies in the GIS prison in Hebron", 15 June 2009; "PCHR calls for investigation into death of Palestinian held in custody by the Preventive Security Service in Hebron", 6 August 2009; "PCHR calls upon the Government in Ramallah to investigate death of Palestinian in GIS custody in Nablus", 11 August 2009.

[924] Al-Haq, *Torturing Each Other* (July 2008)

[925] In July 2008, the *Financial Times* reported that "with almost the entire West Bank leadership of Hamas in jail, the [Palestinian Authority] and Israel have now taken aim at what is widely seen as a crucial source of the group's political strength: the tight network of schools, orphanages, clinics, charities and businesses run by the Islamists" ("West Bank 'tsunami'..."). Entire boards of NGOs have been replaced with committees appointed by the Palestinian Authority ("Palestine divided...", p. 12.)

[926] PCHR, "PCHR condemns interference of the Ministry of Interior and security forces in election affairs of the Women's Arab Union in Nablus", press release, 14 July 2008.

[927] ICHR, *Fourteenth Annual Report*. PCHR reported the forceful closure on 10 August of a number of associations and printing workshops in Hebron ("PCHR condemns attacks on civil society organizations and the continued arrests against Hamas members in the West Bank", press release, 10 August 2008). ICHR reports that, on March 16, the Palestinian Preventive Security agency closed the Scientific Medical Association, a 24-hour medical centre housing a pharmacy, laboratory, dental clinic, osteopaths, gynaecologists and paediatricians, which had been operating for 17 years (ICHR, "Monthly report on violations...", March 2009).

4. Appointments

1562. According to ICHR, "the Caretaker Government continues to discharge a large number of civil and military service employees, or suspend their salaries, under the pretext of 'non-adherence to the legitimate authority' or 'non-obtainment of security approval' on their appointments, which has become a pre-requirement for enrolment in public service".[929] In effect, this measure excludes Hamas supporters or affiliates from public sector employment.[930]

1563. According to PCHR, at the start of the 2008 school year, "on 14 October, the Ministry of Education in Ramallah sent written notices to dozens of teachers, cancelling their employment contracts, and dismissing them without notice. The notices claimed that the Ministry of Education did not approve their employment any longer."[931] Al-Haq reported that some teachers were asked to sign pledges to refrain from political activity.[932] ICHR reported that 200 teachers were dismissed (not reappointed) at this time. ICHR petitioned the Palestinian High Court of Justice to seek the reappointment of around 50 of them, and is still waiting for a decision.[933]

B. Freedom of the press, freedom of expression and opinion

1564. Allegations of violations of press freedom by the Palestinian Authority in the West Bank in the past year are linked to reports of arrests of journalists, the closure of media offices, the forcible changing of newspaper and news website headlines,[934] attacks against photographers, some of whom have been forced to delete material and breaking or confiscating photographic equipment.[935] The journalists' association Palestinian Center for Development and Media Freedoms (MADA) reports a gradually worsening situation.[936]

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[928] Mission interview with Al-Haq, 2 July 2009.

[929] ICHR, *Fourteenth Annual Report*, p. 21.

[930] Mission telephone interview with ICHR, 30 July 2009.

[931] PCHR, "PCHR calls upon the Palestinian Government to reverse decision to dismiss dozens of West Bank teachers", press release, 27 October 2008.

[932] Al-Haq affidavit No. 4439/2008, 27 October 2008.

[933] Mission telephone interview with ICHR, 30 July 2009.

[934] Mission telephone interview with Al-Haq, 15 July 2009.

[935] PCHR press releases: "PCHR condemns continued detention of journalists by Preventive Security Service in the West Bank", 12 February 2009; "Unknown persons shoot at offices of al-Hayat al-Jadeeda newspaper in al-Bireh, and car of Government official in Nablus", 9 February 2009http://www.pchrgaza.org/files/PressR/English/2008/25-2009.html 30-Nov. 2008; "PCHR condemns attacking journalists and media institutions in the West Bank and Gaza Strip", 30 November 2008.

[936] MADA, *Annual Report: 257 Violations of Media Freedoms in OPT during 2008*. There are many other examples; see, for instance, "PCHR gravely concerned over deterioration…".

1565. The Mission received several reports of direct or indirect interference in media coverage of demonstrations in the West Bank during the Israeli military operations in Gaza. The Mission was informed, for example, that the Palestinian Authority censored television programmes and newspapers, and that editors were at times informed verbally not to use certain terms or words, or not to broadcast programmes that could be considered as incitement against the Palestinian Authority.[937]

1566. MADA reported that, on 2 January 2009, an Associated Press photographer covering a march in Ramallah in support of the people of Gaza was attacked by members of the Military Intelligence. The photographer said a security official in civilian clothing first shouted at him to stop taking pictures and then he was assaulted by two security agents and taken by force to a nearby building, where he was beaten until he lost consciousness. He was taken initially to the intelligence headquarters but then transferred to a hospital, where he was treated for a broken nose and subsequently released.[938]

1567. In another incident, on 18 January 2009, a well-known West Bank journalist was reportedly detained overnight at Preventive Security headquarters in Hebron and questioned about an interview he had given to the al-Quds Satellite Channel in which he was critical of the Palestinian Authority.[939] According to his affidavit, he was then brought before the Director of the Preventive Security in Hebron, who he said encouraged him to exercise self-censorship.[940]

1568. Between 24 and 27 January 2009, four correspondents of al-Quds Satellite Channel were arrested by the Preventive Security Service, the Palestinian General Intelligence and the Palestinian Military Intelligence, and interrogated about their work.[941]

1569. On 22 April 2009, PCHR noted the arrest by the police in Nablus of a professor of political science at An-Najah University in Nablus who had expressed support for Hamas on a programme of the al-Aqsa television channel when asked to comment on the recent attack against members of the Palestinian Legislative Council by the security forces.[942]

1570. On 16 July 2009, the Prime Minister issued a decision to close the international television channel al-Jazeera in the West Bank, because it broadcast an interview with a senior Fatah leader, who accused senior Palestinian Authority officials of being implicated in the death of former President Arafat.[943] Although the ban was lifted on 18 July, the Prime Minister announced that he would pursue legal action against the channel "for its continuous incitement against the Palestinian National Authority."[944]

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[937] Mission interview with Al-Haq, 2 July 2003.

[938] "Violations of media freedoms…".

[939] Al-Haq affidavit No. 4634/2009, 22 January 2009.

[940] Ibid. See also "Violations of media freedoms…"

[941] "Violations of media freedoms…".

[942] PCHR press releases: "PCHR notes with grave concern the arrest of Dr. Abdul Sattar Qasem by the Palestinian police in Nablus", 22 April 2009; "PCHR condemns attack on [Palestinian Legislative Council] member Sheikh al-Beetawi", 20April 2009.

[943] PCHR, "PCHR condemns decision to suspend al-Jazeera's work in the West Bank", press release, 16 July 2009; Human Rights Watch, "Palestinian Authority: lift the ban on al-Jazeera", 17 July 2009; International Federation of Journalists, "IFJ condemns Palestinian Authority over ban on al-Jazeera", 16 July 2009.

C. Freedom of assembly: repression of demonstrations during the Israeli military operations in Gaza of 27 December 2008-18 January 2009

1571. The Mission received information from various sources that demonstrations in support of Gaza were both prevented from taking place and, in some cases, violently repressed.[945]

1572. Security officers reportedly used excessive force during demonstrations on 2 January in Hebron and Ramallah. At both events, protestors suffered injuries after being beaten by security officers. Journalists at the Hebron protest were prevented from reporting on the event.[946]

1573. Al-Haq informed the Mission that a student demonstration at Birzeit on 5 January 2009, which had the stated aim of "showing the occupation forces that Palestinian students reject all aggression against Gaza", saw a heavy deployment of Palestinian Preventive Security, General Intelligence and Military Intelligence services personnel. Many students were reportedly beaten;[947] 50 were injured, 9 of whom were hospitalized. Many were also detained, although most were released later the same day. Ms. Khalida Jarrar, a member of the Palestinian Legislative Council, informed the Mission that she had received a call from one of the students asking her to come to the hospital and witness the injuries.[948]

1574. According to Al-Haq, on 26 January, after the end of the Israeli military operations in Gaza, a peaceful sit-in was held near the security forces' headquarters in Hebron against detentions on political grounds. Reportedly, "security forces beat demonstrators, including children, with sticks. Although several demonstrators were injured, security forces impeded access of medical personnel."[949] The affidavit of one eyewitness states that "Palestinian security officers demanded that we disperse and take our banners down. As demonstrators refused to disband, a group of female security officers started beating them with sticks. The security officers addressed the demonstrators, saying: 'You are Shiite. In Gaza, you shot the legs of Fatah activists. You stole food supplies in Gaza.' Security officers also impeded access to a Palestinian ambulance and prevented medics from evacuating eight injured protestors."[950]

1575. In another serious incident, a former student leader who used to be a well-known political activist informed the Mission that he was tortured by the Palestinian Authority's security forces, apparently because of his protest activities. During the Israeli military operations in Gaza, he took part in daily protests and was stopped several times by the security services. He reported that on 2 January 2009, after the Friday midday prayers, he was stopped by security personnel in plain clothes and in uniform in the centre of Ramallah. He was pushed into a car carrying the emblem of the Palestinian Authority, where electrical shocks were applied to his body. He was then taken to the Military Intelligence office and interrogated. He alleges that a high-ranking Military Intelligence official threatened him with six months' arrest under the emergency law and warned him not to criticize the Palestinian Authority and to refrain from talking about the resistance, Hamas and Gaza.[951]

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[944] Al-Jazeera, "Al-Jazeera West Bank ban 'revoked'", 19 July 2009.

[945] Mission interview with PCHR, 2 July 2009; Mission interview with ICHR, 2 July 2009; Mission interview with Al-Haq, 2 July 2009; "Monthly report on violations…", January 2009; "Field report", January-March 2009.

[946] "Monthly report on violations…", January 2009.

[947] Mission interview with Al-Haq, 2 July 2009; ICHR reported in similar terms on the event. Mission interview with ICHR, 2 July 2009.

[948] Mission interview with WB/02, 16 July 2009.

[949] "Field report", January-March 2009.

[950] Al-Haq affidavit No. 4692/2009, 7 February 2009; see also "Monthly report on violations…", January 2009.

D. Legal analysis

1576. The Palestinian Authority, inasmuch as it exercises control over the territory and people, has an obligation to respect and enforce the protection of human rights.[952] When assessing the aforementioned alleged violations, the terms of international human rights law, to the extent that it forms part of customary international law, must be examined. Most provisions of the Universal Declaration of Human Rights are considered part of customary international law and would, therefore, apply. In addition, the Palestinian Authority has declared its commitment to respect international human rights law. The Palestinian Basic Law contains a number of articles protecting human rights as well as a commitment to abide by major human rights instruments.[953] Article 10 (2) states that "The Palestinian National Authority shall work without delay to join regional and international declarations and covenants which protect human rights". The Basic Law itself broadly encompasses the rights enshrined in the Universal Declaration of Human Rights.

1577. According to information received by the Mission, which it considers to be reliable, the Palestinian Authority has carried out arbitrary and unlawful arrests and detentions of political opponents in the West Bank, and regularly denied political detainees access to legal representation and basic due process rights, including the right to be brought promptly before a court and charged with a recognizable criminal offence, contrary to the norms contained in articles 9 and 10 of the Universal Declaration of Human Rights. Arresting individuals based on their political opinions also constitutes a discriminatory practice contrary to article 1.

1578. Subjecting detainees to acts of torture, cruel, inhuman or degrading treatment is prohibited by the customary international law norm reflected in article 5 of the Universal Declaration, and constitutes a violation of their right to security of the person as contained in article 3. Insofar as torture or other cruel, inhuman or degrading treatment can be established, individual criminal responsibility attaches to the perpetrator and any one else ordering, assisting or participating in the commission of the crime.

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[951] Mission telephone interview with WB/02, 16 July 2009.

[952] It is necessary to note in this respect that the Palestinian Authority's control and law enforcement ability extend only to "Area A", and that they are also subject to the ultimate control by the occupying Power, which thus retains overall control and responsibility (see Fourth Geneva Convention, art. 47).

[953] See chap. IV.

1579. Death in detention as a result of wilful killing, torture or other forms of abuse constitutes a violation of the right to life reflected in article 3 of the Universal Declaration.

1580. Excessive force in policing demonstrations in the instances reported above contravenes the requirements of the United Nations Code of Conduct for Law Enforcement Officials (art. 3) and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (principle 4) that law enforcement officials use force only when strictly necessary and to the extent required for the performance of their duty, and that they apply non-violent means first, using force only if other means remain ineffective or without any promise of achieving the intended result. In addition, it may violate the right to freedom of expression, the right to peaceful assembly (article 20 of the Universal Declaration of Human Rights) and the right not to be discriminated on the basis of political opinions.

1581. Reports that the Palestinian Authority interfered with the work of journalists and the media give rise to the concern that the right to freedom of opinion and expression has been interfered with. According to article 19 of the Universal Declaration of Human Rights, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

1582. The Mission considers that the information it received about the requirement for security approval and recognition of the "legitimate authority" as a prerequisite for public office, as well as for teaching and other posts in public schools and membership on boards of associations, suggests a violation of the right to hold public office and of the right not to be discriminated on the basis of political beliefs.

1583. Interference with the constitution of boards of associations, or the registration of certain associations on grounds of political allegiance, would, if confirmed, indicate a violation of the right to form associations (article 20 of the Universal Declaration). Dismissal from public appointment on the basis of (presumed) political affiliation violates the right to work, to just and favourable conditions of work and to protection against unemployment (art. 23) and the right to non-discrimination (art. 1).

E. Conclusions

1584. From the information available to it, the Mission finds that there are features of the repressive measures against actual or perceived Hamas affiliates and supporters in the West Bank that would constitute violations of international law. Furthermore, in efforts to minimize the power and influence of Hamas, the protection and the promotion of human rights have generally been eroded. The Mission notes that these measures and their objectives are relevant to the context within which the Israeli offensive in Gaza was launched, as analysed in chapter II.[954]

1585. The Mission is concerned that, by failing to take action to put an end to the practices described above, the Palestinian executive and judicial authorities are contributing to the further deterioration of the fundamental rights and freedoms of Palestinians, the rule of law and the independence of the judiciary.

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[954] "Leading security figures have taken to referring to Hamas in front of Israeli counterparts as a 'common enemy' and speak in crudely violent terms of how they plan to treat it" ("Palestine divided…").

1586. It appears from the information the Mission received that the Palestinian Authority's actions against political opponents in the West Bank started in January 2006, intensified between 27 December 2008 and 18 January 2009, and is continuing until today.

1587. The Mission considers detentions on political grounds legally unacceptable for several reasons: the arrest and indefinite detention (without trial) by security services and under the military judiciary system are in violation of Palestinian law and international human rights law; and the arrests and detentions are apparently based on political affiliation, which would violate the right not to be arbitrarily detained, the right to a fair trial, and the right not to be discriminated against on the basis of one's political opinion, which are both part of customary international law. Moreover, the reports of torture and other forms of ill-treatment during arrest and detention, and the reports of deaths in detention raise further concerns and warrant proper investigation and accountability.

1588. The Mission is concerned about interference with the freedom of the media.

1589. It is a serious concern to the Mission that the normal system of checks and balances between the executive, the legislative and the judiciary branches in the area controlled by the Palestinian Authority appears to be flawed. There seems to be little evidence of a functioning accountability system to counter instances of torture and other forms of abuse of power. It is also of serious that, in the absence of governmental oversight, civil society organizations are receiving threats and being harassed and seeing their operations impeded by administrative obstacles.[955]

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[955] Mission interview with Al-Haq, 2 July 2009.

PART THREE: ISRAEL

1590. The Mission, in examining, as required by its mandate, alleged violations occurring in the context of the Israeli military operations conducted in Gaza from 27 December 2008 to 18 January 2009, whether before, during or after, also considered allegations of violations against Israeli citizens and residents. The Mission focused on two areas that it considered particularly relevant: (a) the launching of rockets and mortars from the Gaza Strip into southern Israel by Palestinian armed groups, and their effects on the civilian population; (b) the action taken by the Government of Israel to repress dissent among its citizens and residents vis-à-vis its military operations in Gaza, and to limit independent and critical reporting on it by human rights organizations and media.

Methodology

1591. One consequence of the lack of cooperation by Israel with the Mission was that it was unable to visit Israel to investigate alleged violations of international law, and in particular to visit relevant sites and interview victims and witnesses. The Mission has, however, received many reports and other relevant materials from Israeli organizations and individuals, including Palestinians living in Israel, and from international human rights organizations and institutions. The Mission, also, met with representatives of a number of Israeli human rights organizations (see annex). The Mission conducted telephone interviews with people either living in or working with communities in southern Israel, including the Bedouin Palestinian community in the unrecognized villages in the Negev. It also interviewed many people in relation to the other matters within its mandate. Israeli victims, witnesses, experts and representatives of southern Israel local authorities appeared at the public hearings held in Geneva on 6 July 2009. Representatives of Israeli civil society and non governmental organizations working on human rights inside Israel were contacted either via video link or telephone. The issue of rocket and mortar attacks on Israel was also covered in interviews conducted in Gaza in May and June 2009 and in communications with the Gaza authorities.

1592. Owing to the lack of access, the chapters in the section below rely more broadly on secondary information than the previous sections.

1593. The Mission found the witnesses it heard in relation to the situation in Israel to be credible and reliable. The Mission has also written to the Gaza authorities and the Government of Israel seeking information and official positions on, inter alia, the issues addressed in the section below. The information received by the Gaza authorities is taken into account in this chapter. The Government of Israel has not responded.

XXIV. THE IMPACT ON CIVILIANS OF ROCKET AND MORTAR ATTACKS BY PALESTINIAN ARMED GROUPS ON SOUTHERN ISRAEL

1594. The Mission conducted telephone interviews with people either living in or working with communities in southern Israel. Five residents of southern Israel appeared at the public hearings in Geneva on 6 July 2009 while three representatives of the Israel Trauma Center for Victims of Terror and War (NATAL) appeared via videolink from Tel Aviv. The issue of rocket and mortar attacks on Israel was also covered in interviews conducted in Gaza in May and June 2009 and in communications with the Gaza authorities.

1595. The Mission was unable to conduct on-site investigations owing to the decision of the Government of Israel not to cooperate with the Mission.

1596. The Mission addressed questions to the Government of Israel regarding individuals who have been affected by rocket and other fire from the Gaza Strip. The request of information included data about any psychological, social and economic harm caused by the rocket and mortar shells that have been launched into Israel. The Mission did not receive any reply to its questions.

1597. Since April 2001, Palestinian armed groups have launched more than 8,000 rockets and mortars from Gaza into southern Israel.[956] Communities such as Sderot, the surrounding kibbutzim and some of the unrecognized villages in the Negev have been in range since that time. During the Israeli military operations in Gaza in December 2008 and January 2009, the range of the rockets and mortars increased significantly to nearly 40 kilometres from the Gaza border, encompassing the Israeli towns of Yavne 30 kilometres to the north and Beersheba 28 kilometres to the southeast.

1598. Since the rocket and mortar fire does not often hit populated areas, and because of the precautions taken by the Government of Israel, the rockets and mortars have caused relatively few fatalities and physical injuries among the residents of southern Israel. Property damage, while by no means insignificant, has not been extensive. More widespread, however, has been the psychological trauma and the feeling of insecurity that living under rocket fire has caused and continues to cause, to people living in the affected towns and villages, as well as the erosion of the economic, social and cultural life of these communities.

1599. Every death and injury is not only a tragedy but a matter of utmost concern to the Mission. The Mission wishes to emphasize that the issues of concern, and indeed the consequences of any attack affecting civilians, cannot be reduced to a recitation of statistics, nor should they be.

A. Summary of rocket and mortar fire from 18 June 2008 to 31 July 2009

1. 18 June 2008-26 December 2008

1600. According to Israeli sources,[957] 230 rockets and 298 mortars were fired against Israel between 18 June and 26 December 2008; 227 rockets and 285 mortars struck territory inside the State of Israel. Media reports indicate that areas struck by rockets included the Western

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[956] Statistics taken from the Report of the Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center (IICC), "Summary of rocket fire and mortar shelling in 2008", available at http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/ipc_e007.pdf.

[957] These figures have been cross-referenced against those given in a report of the IICC entitled "The Six Months of the Lull Arrangement", December 2008. Available at http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/hamas_e017.pdf.

Negev,[958] Sderot[959] and Ashkelon.[960] This includes the 157 rockets and 203 mortars that were fired during the ceasefire, which ended officially on 18 December 2008.[961]

1601. The Mission notes that 92 per cent (212) of the rockets and 93 per cent (279) of the mortars fired between 18 June and 26 December 2008 were fired after 5 November 2008.[962]

1602. While there were no fatalities inside Israel, two young Palestinian girls, aged 5 and 12 years, were killed when a rocket fell short, landing in northern Gaza on 26 December 2008.[963]

1603. Media reports indicated that, during this period, six Israelis and one foreign worker were wounded as a result of rockets landing in built-up areas in southern Israel. Where rockets did not land in open space, property damage was sustained. As is discussed below, an unknown number of people in southern Israel were treated for shock following the sounding of the early warning system and the subsequent rocket strikes.[964]

2. 27 December 2008-18 January 2009

1604. According to the Israeli authorities, armed groups in Gaza fired approximately 570 rockets and 205 mortars into Israel during the 22 days of the military operations in Gaza.[965] On their websites, the al-Qassam Brigades and Islamic Jihad claimed to have fired over 800 rockets into Israel during this time.[966]

1605. During the Israeli military operations in Gaza, the range of rocket and mortar fire increased dramatically, reaching towns such as Beersheba 28 kilometres to the south-east and Ashdod 24 kilometres to the north of the Gaza Strip. Rockets continued to fall in areas such as

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[958] On 24 June 2008, 3 Qassam rockets struck the Western Negev; see "End of Truce? 2 Kassam hit w. Negev", *Jerusalem Post*, 24 June 2008. On 27 November 2008, a rocket struck and damaged a house on a kibbutz in the western Negev, see "Kassams continue to strike Negev", *JTA*, 27 November 2008.

[959] On 24 June 2008, a rocket hit the yard of a house in Sderot; see "Rockets 'violated Gaza ceasefire'", *BBC News*, 24 June 2008.

[960] For example, on 14 November 2008, several rockets struck Ashkelon; The Times, "Hamas militants step up rocket attacks on Israel", 15 November 2008. Ashkelon is approximately 20 kilometres from the Gaza border.

[961] Ibid.

[962] On 5 November 2008, Israel made an incursion into Gaza claiming that its aim was to close a cross-border tunnel that Palestinian fighters intended to use to kidnap an Israeli soldier. During the incursion, a member of Hamas was killed and several Israeli soldiers were wounded. *See* "Gaza truce broken as Israeli raid kills six Hamas gunmen", *The Guardian*, 5 November 2008.

[963] 'Palestinian rockets kill 2 schoolgirls in Gaza', *Fox News.com*, 26 December 2008.

[964] The Mission notes that the submission of 9 August 2009 by Magen David Adom ('MDA') detailed 407 stress-related injuries in Sderot alone from 1 June to26 December 08.

[965] See, Israel Ministry of Foreign Affairs at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Missile+fire+from+Gaza+on+Israeli+civilian+targets+Aug+2007.htm; see also "Rockets from Gaza", Human Rights Watch, 6 August 2009, p.8. According to HRW, the IDF stated that 650 rockets had been launched from Gaza, but only 570 rockets had struck Israel.

[966] HRW report of 6 August 2009, p. 2.

Sderot, the Eshkol Regional Council and the surrounding kibbutzim, which had experienced rockets strikes since 2001. A total of 90 rockets struck Sderot during the 22 days of military operations in Gaza.[967]

1606. During the period of the operations, three civilian fatalities and one military fatality were recorded in Israel resulting from the rocket and mortar strikes launched from Gaza. According to Magen David Adom, 918 people were injured (17 critically injured, 62 medium injuries and 829 lightly injured) in this time period.[968] There were also 1,595 people inside Israel treated for stress-related injuries.[969]

3. 19 January 2009-31 July 2009

1607. According to the Israeli authorities, more than 100 rockets and 65 mortars were fired into Israel after 19 January 2009.[970] No fatalities resulted from these rocket and mortar strikes. The Mission was unable to obtain any official statistics of civilians physically injured by rockets and mortars during this time. On 1 February 2009, one Israeli civilian was lightly wounded when mortar shells, fired from Gaza, exploded in the Sha'ar Hanegev region.

1608. The majority of the rockets and mortars were fired prior to 15 March 2009. On 12 March 2009, the Ministry of the Interior of the Gaza authorities stated that rockets were being "fired at the wrong time" and that the Gaza authorities were investigating those responsible.[971] On 20 April 2009, a member of Hamas called on other armed groups to stop firing rockets "in the interests of the Palestinian people".[972] On 19 July 2009, Xinhua News reported that Hamas had arrested two members of Islamic Jihad firing mortars at Israeli forces.[973]

1609. In July 2009, Hamas declared that it was entering a period of "cultural resistance", stating that it was suspending its use of rockets and shifting its focus to winning support at home and abroad through cultural initiatives and public relations.[974]

B. Relevant Palestinian armed groups

1610. The Palestinian armed factions operating in the Gaza Strip and claiming responsibility for the majority of the rocket and mortar launchings are the Izz al-Din al-Qassam Brigades[975], the al Aqsa Martyrs' Brigades and Islamic Jihad. A brief description of each group is given below.

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[967] Ibid, p.8.

[968] Submission to the Mission, 9 August 2009.

[969] Ibid.

[970] See, Israel Ministry of Foreign Affairs at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Palestinian_ceasefire_violations_since_end_Operation_Cast_Lead.htm

[971] "Hamas criticizes Gaza rocket fire", *Al Jazeera* 13 March 2009.

[972] "Hamas discusses resistance regulation with Gaza groups", *Xinhua News Agency*, 22 April 2009.

[973] "Hamas reportedly arrests Gaza operatives firing at Israeli troops", Xinhua News Agency, 19 July 2009.

[974] The New York Times, "Hamas Shifts From Rockets to Culture War", 23 July 2009, available at http://www.nytimes.com/2009/07/24/world/middleeast/24gaza.html?scp=2&sq=hamas&st=cse

1611. The 'al Qassam Brigades' are the armed wing of the Hamas political movement. According to a June 2007 report of Human Rights Watch, the al-Qassam brigades initiated the manufacture of rockets, now generically known as "Qassams", inside the Gaza Strip.[976] According to figures given on the Al-Qassam Brigades website, the group launched 335 Qassam rockets, 211 Grad rockets and 397 mortars into Israel during the Israeli military operations in Gaza.[977]

1612. The al-Aqsa Martyrs' Brigades were organized during the second intifada and claim affiliation with Fatah. This group too has claimed responsibility for rocket and mortar fire on Israel following the Egyptian brokered ceasefire (*tahdiya),* which started on 18 June 2008.

1613. Islamic Jihad wields considerably less political power than either Hamas or Fatah. Its military wing is known as Saraya al-Quds and the group calls the rockets it manufactures inside Gaza, 'al Quds'. Islamic Jihad has made numerous claims of responsibility for the launching of rockets into Israel,[978] including the first spate of rocket fire after 18 June 2008.

1614. On its website, the Abu Ali Mustafa Brigades,[979] the military wing of The Popular Front for the Liberation of Palestine also claimed responsibility for launching 177 rocket attacks and 115 mortars on several towns and villages inside Israel from 27 December 2008 to 18 January 2009.

1615. The al-Naser Salah ad-Din Brigades, the military wing of the Popular Resistance Committee has stated that it too has launched rockets into Israel.[980] The Committee is a coalition of different armed factions who oppose what they perceive as the Palestinian Authority and Fatah's conciliatory approach to Israel.

C. Type of rockets and mortars held by Palestinian armed groups[981]

1616. There is little independent confirmation of the types of weaponry held by Palestinian armed groups or the number of weapons that may be stockpiled. According to an Amnesty International report, of February 2009, the arsenals held by armed groups in the Gaza Strip include: al-Qassam (or al-Quds), 122mm Grad and 220 Fadjr-3 rockets as well as the al-Battar, the Banna 1 and Banna 2 anti-armour rockets.

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[975] The group was named after a Syrian who worked with displaced Palestinians in what is now northern Israel, and died in a clash with British troops in 1935, sparking the Palestinian revolt of 1936-9.

[976] "Indiscriminate Fire", Human Rights Watch, 30 June 2007.

[977] See http://www.alqassam.ps/arabic/upload/forkan.pdf.

[978] According to statistics provided on its website, the Saraya al-Quds Brigades claimed responsibility for the firing of 235 mortar and rockets during the military operations . See http://www.israj.net/vb/t1839/.

[979] *See* http://www.kataebabuali.ps/inf2/articles-action-show-id-223.htm.

[980] During the operations in Gaza, the group claimed responsibility for launching 132 rockets and 88 mortars. See http://www.moqawmh.com/moqa/view.php?view=1&id=300.

[981] See the Amnesty International report "Fuelling the Conflict: Foreign arms supplies to Israel/Gaza", 23 February 2009; p. 15-16 and p. 30-31.

1. al-Qassams

1617. There are thought to be at least three generations of Qassam rockets: (a) the Qassam 1, developed in 2001, with a range of 4.5 kilometres and an explosive load of 0.5 kilograms; (b) the Qassam 2, developed in 2002, with a range of 8-9.5 kilometres and an explosive load of 5-9 kilogram; and (c) the Qassam 3, developed in 2005, and with a range of 10 kilometres and an explosive load of 20 kilograms.[982]

1618. The rockets manufactured in the Gaza Strip are fashioned from rudimentary materials such as hollow metal pipes. They are relatively unsophisticated weapons and lack a guidance system, and so cannot be aimed at specific targets.[983] Jane's Terrorism and Security Monitor has described them as "inaccurate, short-range and rarely lethal".[984] Even so, Qassam rockets have inflicted both fatalities and injuries to residents of southern Israel.

2. 122 mm Grad rocket

1619. 122 mm Grad rocket is a Russian-designed missile with a range of approximately 20 to25 kilometres. Given the higher level of technological sophistication and the fact that it is manufactured with material not easily (if at all) available in Gaza, it is likely that they are not made in Gaza.

1620. While most 122 mm Grad rockets have a range of about 20 kilometres, some have landed 40 kilometres inside Israel.[985] Global Security has concluded that on the basis of photographs, that the rockets that struck open space near Yavne and Bnei Darom on 28 December 2008 were Chinese-manufactured 122 mm WeiShei-1E rockets, which can travel distances of 20 to 40 kilometres.[986]

3. 220 mm Fadjr-3 rocket

1621. The 220 mm Fadjr-3 rocket is Iranian designed and is also thought to be smuggled into Gaza.

4. Anti-armour rockets

1622. Palestinian armed groups are also alleged to possess Chinese-designed rockets that have been smuggled into Gaza.[987] According to Jane's Defence Weekly, Hamas is also in possession of several home-made anti–armour rockets, including the al-Battar, the Banna 1 and the Banna 2.[988]

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[982] Technical Report to the United Nations Fact-Finding Mission on the Gaza Conflict, Irish Defence Force Ordinance School, July 2009.

[983] Ibid.

[984] Rocket powered 'Hamastan, Jane's Terrorism and Security Monitor, "11 July 2007.

[985] For example, in Beersheba on 30 and 31 December 2008: "Rockets reach Beersheba, cause damage", *Ynet News*, 30 December 2008,, "Rocket barrages hit Beersheba, Ashkelon; 5 lightly hurt", *Ynet News*, 31 December 2008.

[986] "Hamas Rockets", Global Security, available at http://www.globalsecurity.org/military/world/para/hamas-qassam.htm.

[987] "Hamas deploys rocket arsenal against Israel", Jane's Defence Weekly, 14 January 2009.

5. Mortars

1623. Mortars are short-range weapons that are generally more accurate than rockets manufactured inside the Gaza Strip.[989] Mortars have rudimentary aiming systems, in which the coordinates of previous strikes can be used to better target subsequent launches. Most mortars have a range of 2 kilometres; according to the Jaffa Centre for Strategic Studies, however, the Palestinian Sariya-1 is a 240 mm mortar with 15 kilometre range.[990]

D. Rocket and mortar attacks by the Palestinian armed groups on Israel[991]

1624. The Mission is providing a brief history of rocket and mortars attacks, as it is relevant to an understanding of the breadth and depth of the psychological trauma suffered by residents of communities closest to the border, such as Sderot, that have been in range since 2001.

1625. The first recorded rocket launch took place on 16 April 2001. On 10 February 2002, the first rocket struck territory inside Israel, when a Qassam 2 rocket fired from Gaza landed in a field six kilometres from the border, near Kibbutz Sa'ad, in the Negev.[992] The first recorded strike of a rocket from Gaza on an Israeli city was on 5 March 2002, when two rockets struck Sderot.[993]

1626. According to statistics compiled by the Intelligence and Terrorism Information Centre at the Israel Heritage & Commemoration Center an organization with links to the Government of Israel, 3,455 rockets and 3,742 mortar shells were fired into Israel from Gaza from 16 April 2001 to 18 June 2008.

1627. The first civilian casualties from rocket fire were recorded on 28 June 2004 in Sderot, when Afik Zahavi (4 years old) and Mordehai Yosefof (49 years old) were killed by a Qassam rocket. Afik's mother, Ruthie Zahavi (28 years old) was critically injured and nine others were wounded. Hamas claimed responsibility.[994]

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[988] Ibid.

[989] Technical Report to the United Nations Fact-Finding Mission on the Gaza Conflict, Irish Defence Force Ordinance School, July 2009.

[990] http://www.weaponsurvey.com/missilesrockets.htm.

[991] Statistics are taken from the report by Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center, "Summary of rocket fire and mortar shelling in 2008".

[992] "The homemade rocket that could change the Mideast", *The Times*, 11 February 2002. Note, however, that the al-Qassam Brigades website posted a press release on 26 October 2001, in which the group claimed responsibility for a rocket attack against an Israeli town inside Israel: http://www.alqassam.ps/arabic/sinaat.php?id=16.

[993] http://www.israelemb.org/articles/2002/March/2002030500.html.

[994] "Israel steps up military action after Hamas rocket attack from Gaza strikes nursery", *The Independent*, 29 June 2004.

1628. From 28 June 2004, when the first fatalities from rocket fire were recorded, to 17 June 2008, 21 Israeli citizens, including two Palestinian citizens of Israel, two Palestinians and one foreign worker were killed inside Israel as a result of rocket attacks and mortar fire. In addition, a Palestinian was killed in Gaza when a rocket landed short of the border, and 20 Palestinians were killed when a vehicle transporting rockets exploded in Jabaliya refugee camp. Eleven of those killed inside Israel were killed in Sderot, a town of just over 20,000 people situated just over a kilometre from the Gaza Strip border.

E. Statements by Palestinian armed groups concerning their launching of rockets into Israel

1629. The al-Qassam Brigades, al-Aqsa Brigades, Islamic Jihad and Popular Resistance Committee all claimed responsibility for rocket and mortar attacks during the time period under review by the Mission. Palestinian armed groups generally justify these attacks as a legitimate form of resistance to Israeli occupation and as acts of self-defence and reprisals for Israeli attacks.[995]

1630. On 5 January 2009, Hamas member Mahmoud Zahar was quoted as saying that "the Israeli enemy ... shelled everyone in Gaza. They shelled children and hospitals and mosques, and in doing so, they gave us legitimacy to strike them in the same way".[996]

1631. On 6 January 2009, during the Israeli military operations in Gaza, Khaled Mashal, Chairman of the Hamas Political Bureau wrote in an open letter that the demand to stop the Palestinian resistance was 'absurd … our modest home made-rockets are our cry of protest to the world'[997]. Hamas, in a press release published on 28 December 2008,[998] declared:

> We appeal to all factions of the Palestinian resistance and its military arm, especially the Brigades of the Martyr Izz el-Din al-Qassam to declare a state of general alert … and take upon themselves the responsibility to protect the Palestinian people, by striking with all the strength it has the Zionists enemy, its military barracks and colonies, and by using all forms of resistance … including the martyrdom operations and striking the Zionist depths…"

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[995] For example, on 24 June 2008, Islamic Jihad fired three Qassam rockets from Gaza into the Western Negev following the targeted assassination of one of its members, Tarek Abu Ghally and another in Nablus earlier that day. Islamic Jihad stated ""we cannot keep our hands tied when this is happening to our brother in the West Bank" (The Jerusalem Post, 24 June 2008). See also chap. III.

[996] HRW report of 6 August 2009, p. 2.

[997] "This brutality will never break our will to be free" *The Guardian*, 6 January 2009. It should be noted that couple of month after the end of OCL and in an interview with *the New York Times*, Mashal stated that "not firing the rockets currently is part of an evaluation from the movement which serves the Palestinians' interest. After all, the firing is a method, not a goal. Resistance is a legitimate right, but practicing such a right comes under evaluation by the movement's leaders". *See* http://www.nytimes.com/2009/05/05/world/middleeast/05meshal.html.

[998] Press release, available at: http://www.palestine-info.info/Ar/default.aspx?xyz=U6Qq7k%2bcOd87MDI46m9rUxJEpMO%2bi1s7qWPRV4XDeu2%2fQ%2bDRjgQnm%2f7wZogCTxIzGTevVWJc5MsXTUO3OLNIY3YA5siKloAIZ6oS1ivXknPx%2fFToxPOB%2f8FLcGJbXOfO%2fHKW97wLT20%3d.

1632. A spokesperson for the Popular Front for the Liberation of Palestine (PFLP) stated two days before the end of the operations in Gaza that "the rockets are both practical and a symbolic representation of our resistance to the occupier".[999]

1633. On 25 May 2009, the Gaza authorities denied that they were preventing rocket attacks on Israel. A spokesman stated "we don't make such decision without agreeing with all the resistance factions in a national consensus…The factions have the right to respond to any Zionist crime using any sort of resistance and there is no lull with the [Israeli] occupation".[1000]

F. Statements by the Gaza authorities to the Mission

1634. In a meeting with the Mission on 1 June 2008, the Gaza authorities stated that they had taken the initiative to spare civilian lives when they renounced suicide attacks in April 2006.[1001] At the same meeting, a Government spokesperson stated that the resistance factions did not aim their rockets at civilians but rather at IDF artillery and other positions from which attacks against Gaza were launched.

1635. In response to questions by the Mission, on 29 July 2009, the Gaza authorities stated that they had "nothing to do, directly or indirectly, with al-Qassam or other resistance factions" and stated that they were able to exercise a degree of persuasion over the armed factions in relation to proposed ceasefires. While noting that the weaponry used by the armed factions was not accurate, the Gaza authorities discouraged the targeting of civilians.

1636. Despite various attempts, the Mission was unable to contact members of armed factions operating within the Gaza Strip.

G. Precautionary measures in effect in southern Israel

1. The Tseva Adom early warning system

1637. The *Tseva Adom* (or 'Red Colour') is an early warning radar system installed by the Israeli armed forces in towns in southern Israel. It was installed in Sderot in 2002 and in different areas of Ashkelon in 2005 and 2006.

1638. When the early warning system detects the signature of a rocket launch originating in Gaza, it automatically activates the public broadcast warning system in nearby Israeli communities and military bases. A two-tone electronic audio alert is broadcast twice, followed by a recorded female voice intoning the words "*Tseva Adom*". The entire programme is repeated until all rockets have hit and launches are no longer detected. During the public hearings held in Geneva on 6 July 2009, Noam Bedein of the Sderot Media Center screened footage of the sounding of the early warning system in Sderot and its effect on the community, for the benefit of the Mission.[1002]

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[999] http://www.pflp.ps/english/?q=pflp-interview-ma-news-agency-israeli-aggression-g.

[1000] Xinhua News, 25 May 2005.

[1001] The statement was widely reported in the international media. See, "Hamas in call to end suicide bombings", *The Guardian*, 9 April 2006.

1639. In Sderot, the system gives residents a warning of approximately 15 seconds before an incoming missile strikes. The further residents are from the Gaza Strip, the longer the warning period. Residents of Ashkelon interviewed by the Mission estimated that the system gives them a 20 second warning, while residents of the more northern city of Ashdod or of the town of Beersheba in the Negev estimate that the system gives them a warning of approximately 40 to 45 seconds.

1640. It should be noted that the *Tseva Adom* system is not 100 per cent effective; according to Noam Bedein, the system failed to detect a rocket that struck Sderot on 21 May 2007, killing one and wounding two others.[1003] Moreover, the system may also give false alerts, a fact which led authorities in Ashkelon to switch off the system in May 2008. Consequently, no warning was given when a rocket struck a shopping centre on 14 May 2008, seriously injuring three people (including Dr. Emilia Siderer, who appeared before the Mission at the public hearings held in Geneva on 6 July 2009).

1641. The sounding of the *Tseva Adom* system and the knowledge that it does not provide a guaranteed forewarning of a rocket strike, have, according to organizations providing mental health services, also had a profound, adverse psychological effect on the communities living within the range of rocket and mortar fire. This issue is discussed in detail below.

2. Construction of fortifications and shelters

1642. In recent years, the Government of Israel has fortified towns in southern Israel with bomb shelters. Some residential homes contain "secure rooms". In March 2008, the Government fortified 120 bus-stops in Sderot[1004] and, by January 2009, all schools in Sderot had been fortified against rocket attacks.

1643. According to an article published in *Haaretz*, approximately 5,000 residents of southern Israel, mostly elderly immigrants from the former Soviet Union, lacked proper reinforced rooms or reasonable access to public shelters.[1005] In interviews with residents of the affected communities in southern Israel, the Mission received reports of families abandoning the upper floors of their homes and living together in a room on the ground floor for fear of the failure of the early warning system and/or not being able to descend from the upper floors quickly enough reach a shelter.[1006]

[1002] "15 Seconds in Sderot", available at http://www.youtube.com/watch?v=ygb6VrW8WZw; "First day of School", available at http://www.youtube.com/watch?v=mFss6p5sTPE&feature=channel_page.

[1003] Telephone interview with Noam Bedein/ Sderot Media Centre, 28 June 2009. See also , 'Woman killed, two wounded in Qassam rocket strike on Sderot', *Haaretz*, 28 May 2007.

[1004] "Gov't places 120 fortified bus stops in rocket-plagued Sderot", *Haaretz*, 5 March 2008.

[1005] "5000 southerners, mostly elderly, lack access to rocket shelter", *Haaretz*, 4 February 2009,

[1006] Telephone interviews with Eric Yalin, 30 June 2009; Rachel Perez, 30 June 2009; Rachel Sushan, 30 June 2009; Naomi Benbassat- Lifshitz, 2 July 2009; Dina Cohen, 5 July 2009; Stewart Ganulin (Hope for Sderot), 8 July 2009.

1644. In March 2009, Sderot inaugurated a reinforced children's recreation centre, designed to provide a rocket-proof place for children to play.[1007] There are fortified playgrounds in Sderot, with concrete tunnels painted to look like caterpillars.[1008]

1645. The Government of Israel has stated that, on current information, spending on fortifications and shelters between 2005 and 2011 will amount to approximately $ 460 million.[1009] It should be noted, however, that the fortifications do not necessarily prevent rockets penetrating these buildings; for instance, on 3 January 2009, a Grad rocket penetrated the fortification of a school in Ashkelon, striking an empty classroom.[1010]

1646. The Mission is concerned about the lack of provision of public shelters and fortifications in the unrecognized villages in the Negev and in some of the recognized towns and villages populated by Palestinian citizens of Israel, living within the range of rocket and mortar fire (see paragraph X below).

H. Impact of rocket and mortar fire on communities in southern Israel

1647. The Mission notes that the impact on communities is greater than the numbers of fatalities and injuries actually sustained. The Mission also notes the information in the Government of Israel paper of July 2009, in which an article from *the Guardian* article was cited, stating that as at July 2009, 92 per cent of Sderot residents had seen or heard a rocket impact, 56 per cent had had shrapnel fall on their homes and 65 per cent knew someone who had been injured.[1011]

I. Fatalities

1648. Between 18 June 2008 and 31 July 2009, there were four fatalities in Israel as a consequence of rocket and mortar fire from Gaza, of which there were three civilian and one military casualties.

1649. On 27 December 2008, Beber Vaknin, 58 years of age, of Netivot was killed when a rocket fired from Gaza hit an apartment building in Netivot.

1650. On 29 December 2008, Hani al-Mahdi, 27 years of age, of Aroar, a Bedouin settlement in the Negev, was killed when a Grad-type missile fired from Gaza exploded at a construction site in Ashkelon. On the same day, in a separate incident, Irit Sheetrit, 39 years of age, was killed and several wounded when a Grad rocket exploded in the centre of Ashdod. The al-Qassam Brigades claimed responsibility for the attack.

[1007] "An Israeli playground, fortified against rockets", *The New York Times*, 12 March 2009.

[1008]. "On Israel-Gaza border, teens learn legacy of hate", *Tampa Bay News*, 8 February 2009.

[1009] Government of Israel, "The Operation in Gaza: 27 December 2008 – 18 January 2009, Factual and Legal Aspects", July 2009"), para. 43 and fn. 23.

[1010] "Experts: Grads in Ashkelon were advanced", *Ynet News*, 1 March 2009.

[1011] "The operation in Gaza…", para. 46, citing statistics appearing in "Middle East Conflict", *the Guardian*, 15 July 2009.

1651. On 29 December 2008, a member of the military, Warrant Officer Lutfi Nasraladin, 38 years of age, of the Druze town of Daliat el-Carmel, was killed by a mortar attack on a military base near Nahal Oz.

2. Physical injuries

1652. According to Magen David Adom (MDA), during the period of the Israeli military operations in Gaza, a total of 918 civilians were wounded by rocket attacks. This figure includes 27 critically wounded, 62 moderately wounded and 829 lightly wounded.[1012] From 19 January to 19 March 2009, 10 people physically injured from rocket fire were treated by MDA.[1013]

3. Psychological trauma/ mental health

1653. In interviews with both residents of southern Israel and the organizations dealing with mental health issues, the issue of psychological trauma suffered by adults and children living in the zone of rocket fire was repeatedly raised. While news articles sometimes report on people being treated for shock following a rocket strike, both individuals and organizations have voiced a real frustration with the lack of focus on what they termed the "invisible damage" caused by rockets. According to MDA, 1,596 people were treated by health facilities in Israel between 27 December 2008 and 18 January 2009.[1014] From 19 January to 2 August 2009, 549 people from Sderot alone were treated for stress-related injuries.[1015]

1654. A study of October 2007, commissioned by NATAL, on the impact of the ongoing traumatic stress conditions on Sderot[1016] found that 28.4 per cent of adults and between 72 and 94 per cent of children in Sderot reported signs indicative of post-traumatic stress disorder.[1017] The study also found that children under the age of 12 years showed a high frequency of reported symptoms including fear, avoidance, behavioural problems, problems at school, somatic problems, regression and difficulty in sleeping.[1018]

[1012] MDA communication to the Mission, 9 August 2009. The Mission notes the figures given in the HRW report of August 2009 which outlined the number of people treated by MDA: 770 people including 3 fatalities, 4 severely wounded, 11 moderately wounded and 167 lightly wounded. See HRW report of August 2009, p. 8.

[1013] HRW report of August 2009, p. 8.

[1014] MDA communication to the Mission, 9 August 2009. Human Rights Watch quotes reports from MDA that it had itself treated 570 cases of people suffering from stress-related injuries: see HRW report of August 2009, p. 8. This figure was confirmed in a meeting between MDA and representatives of the Mission in Geneva on 22 July 2009.

[1015] Ibid.

[1016] Available at http://www.theisraelproject.org/atf/cf/%7B84dc5887-741e-4056-8d91-a389164bc94e%7D/NATAL%20STATS%20FOR%20WEB.PPT#353,1, The Impact of the Ongoing Traumatic Stress Conditions on Sderot Research Survey for NATAL – The Israel Trauma Center for Victims of Terror and War: Initial Findings & Recommendations. See also "Study: Most Sderot kids exhibit post-traumatic stress symptoms" *Haaretz*, 17 January 2008.

[1017] Telephone interview with Orly Gal, NATAL, 28 June 2009; See also, "Study: Most Sderot kids exhibit post-traumatic stress symptoms", *Haaretz*, 17 January 2008; These findings were confirmed by Dr. Rony Berger who spoke at the public hearings in Geneva on 6 July 2009. Dr Berger also stated that consumption of tranquillisers was 2.5 times as high in Sderot than in communities of similar size and socio-economic status that did not live under bombardment. The Mission notes also the 29 July 2009 submission by Dr. Yechiel Lasry, Mayor of Ashdod in which he detailed similar symptoms in children in Ashdod following the rocket attacks on Ashdod during the military operations in Gaza.

1655. In a submission to the Mission, Dr. Rony Berger, a clinical psychologist and Director of Community Services described a January 2009 visit to a family in Ofakim, a town 12-15 kilometres from the Gaza border, in the following terms:

> The family was referred to the Community Staff for treatment by the father, who works at one of the factories in the south. He said that his house had "turned into a madhouse", and that the level of stress was so high that "you could cut the air with a knife" …When I reached the family home in Ofakim, I found a house full of children (12 children, aged one year to 22 years). It was a large house, and full of life; perhaps more accurately – frantic. I arrived exactly as the siren was sounding, and I saw a range of anxiety-related responses, some of which were certainly extreme. The mother was screaming at the top of her voice, her sister turned completely white, the younger children cried, the eldest daughter (22) froze and had difficulty moving towards the secure room, while her younger brother (14) seemed almost catatonic. The father, who had called me, moved towards the reinforced room slowly and apathetically, as he turned towards me, pointing towards his family members, and said: "You see what I have to deal with every day." His daughter urged him, screaming, to move faster, but it seemed that the louder she shouted, the slower he moved towards the reinforced room. They started arguing very loudly, while all the rest of the family joined into the fray.[1019]

1656. Dalia Yosef of the Sderot Resiliency Center stated that the Center's 18 therapists provided counselling to over 300 people in Sderot during the military operations in Gaza and noted that trauma symptoms were particularly noticeable in children. Ms. Yosef stated that trauma was triggered not only by the rocket strikes but also by the sounding of the early warning system alerts, even where no rocket strike subsequently occurred.[1020]

1657. The observations made by the organizations dealing with treating trauma were borne out in the descriptions of daily life made in the interviews held with residents in the affected communities.[1021] The Community Manager of Kibbutz Gevim, near Sderot, stated that 60 per cent of children in the kibbutz were in touch with psychological services.[1022] A resident of

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[1018] At a meeting with the Mission on 22 July 2009, MDA described similar symptoms of stress-related injuries that their paramedics had observed and treated when called out following rocket and mortar attacks in southern Israel.

[1019] Submission by NATAL, 'Description of a recent home visit by NATAL's Dr Rony Berger to a family in Ofakim January 2009, submitted to the Mission on 3 July 2009.

[1020] Telephone interview with Dalia Yosef, Sderot Resiliency Center, 2 July 2009.

[1021] For example, Ofer Shinar during the public hearings in Geneva on 6 July 2009 described his observation of psychological trauma of civilians, including his students, in Sderot following rocket attacks during the time of the operation in Gaza.

[1022] Telephone interview with Avi Kadosh, 26 June 2009.

Beersheba described how she was unable to sleep in her apartment because of panic attacks and how she now lived with relatives.[1023]

1658. In a telephone interview on 29 July 2009, Avirama Golan, a journalist for *Haaretz* who lived in Sderot from April 2008 to May 2009, commented on the psychological impact of living under rocket fire:

> You get used to it in a sense but it changes your perception of the world, of the way that the world functions. Your sense of what is normal becomes skewed. You cannot be sure of anything. All the authorities that children have - their mother, their father - they don't count. Nothing can keep you safe.

4. Damage to property

1659. Where rockets have landed in towns and villages in southern Israel, they have caused localized property damage. This has included private houses[1024] and cars.[1025] During the operations in Gaza, a total of nine schools and kindergartens in Sderot, Beersheba, Ashdod, Ashkelon and Kiryat Ha Hinoch were hit and damaged by rockets.[1026] Two kindergartens were struck and damaged by rocket fire in Ashdod.[1027] On 8 January 2009, a Grad rocket hit a school in Ashkelon.[1028]

1660. On 26 February 2009, a rocket launched from Gaza damaged two houses in Sderot.[1029] On 5 March 2009, a rocket hit a synagogue in Netivot, causing light damage.[1030]

1661. The Mission was not able to obtain an estimate of the financial cost of the damage to property caused by rocket and mortar fire. In its paper of July 2009, the Government of Israel stated, "for direct damage caused to buildings or property as a result of rocket or mortar attacks 2,400 claims, amounting to a total of 31 million NIS ($7.95 million) were submitted in 2008, in addition to 2,300 additional claims between January and July 2009, of which a total of approximately 25 million NIS ($6.4 million) was granted thus far".[1031]

[1023] Telephone interview with Rachel Perez, 30 June 2009.

[1024] For example, a house in a kibbutz in the Negev was damaged by a rocket on 27 November 2008, see, "Kassams continue to strike Negev", *JTA*, 27 November 2008.

[1025] On 17 December 2008, a rocket landed in the carpark of a shopping centre in Sderot, injuring three people and causing serious damage to a supermarket and to cars. See "Three injured in Kassam attack", *JTA*, 17 December 2008.

[1026] Report of the Secretary-General on Children and Armed Conflict, delivered to the 63rd Session of the General Assembly, UN Doc S/2009/158, para. 90, dated 26 March 2009. Details of the damage to Ashkelon schools were also given by Benny Vaknin, mayor of Ashkelon and Dr. Alan Marcus, Director of Strategic Planning, in their presentation to the Mission at the public hearings in Geneva on 6 July 2009.

[1027] "Rocket slams into Ashdod kindergarten", *Jerusalem Post*, 6 January 2009.

[1028] "4 troops hurt in mortar attack; Grad hits Ashkelon school", *Ynet News*, 8 January 2009; Testimony of Benny Vaknin, mayor of Ashkelon and Dr. Alan Marcus, Director of Strategic Planning, to the Mission at the public hearings in Geneva on 6 July 2009.

[1029] "Kassam damages two Sderot home", *JTA*, 26 February 2009.

[1030] "Rocket hits synagogue in Netivot; IAF destroys Gaza tunnels", *Haaretz*, 9 March 2009.

5. Impact on the right to education

1662. The combination of the early warning systems alarms (and the move to the shelters), the rockets strikes and the ongoing psychological trauma caused by the alerts and the strikes had an adverse impact on the right to education of children and young adults in the affected communities in southern Israel.[1032]

1663. Most obvious is the disruption caused to education caused by the closure of schools during heightened hostilities. During the operations in Gaza, educational institutions in Sderot, Ashkelon and Ashdod and across areas within rocket range were closed.

1664. Even when classes are held in more peaceful times, education is disrupted by students having to move to secure areas every time that the early warning system sounds, at time from 10 to 20 times a day, making it virtually impossible for classes to be held. When interviewed on 24 June 2009, Merav Moshe, a lecturer at Sapir College near Sderot, told the Mission:

> At Sapir, the atmosphere is tense. Both the faculty and the students are in a state of fear and are perpetually anxious. It is impossible to teach or for students to concentrate on their studies when they have to run back and forth to the shelters. Even in classes that are protected, the students need to move forward and herd in the front of the room away from the windows. It is not a good learning or teaching environment.

1665. Commenting on the impact of the education of children in the kibbutzim near Sderot, Avi Kadosh, during a telephone interview on 29 June 2009, stated

> Children here can't run around and play. They have to stay close to a secure place. The older ones have grown up with it and know the drills. They know they have 15 seconds to get inside to a protected place. Some children have been born into it and for them; they clap their hands and run to the safety room. It is also difficult for them to get to class. The rockets are disruptive and the atmosphere is not conducive to learning.

1666. Those who are experiencing symptoms of post-traumatic stress disorder have a diminished ability to learn. In a telephone interview on 29 June 2009, Batya Katar, the Director of the Parents' Committee concerned with schools and kindergartens in Sderot, told the Mission

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[1031] "The operation in Gaza…", footnote 27.

[1032] According to the Government of Israel, there were a total of 196,444 students within the rocket range: "The operation in Gaza…", para. 50.

> It is difficult to describe the suffering of the children when they hear the red alert. They do not even need to see the Qassam, just the alert is enough. Children start to cry, to wet themselves. Sometimes it is like people are having an epileptic fit: they start shaking uncontrollably. Immediately, when there is an alert near a school, a group of psychologists usually come to speak to the students.[1033]

1667. In their interviews, three lecturers at Sapir College spoke of students who, following repeated rocket attacks on the school, felt unable to continue their studies.[1034] Ofer Shinar, during the public hearings in Geneva on 6 July 2009, gave a description of a student at Sapir College who had assisted in escorting residents of Sderot during the time of the military operations in Gaza, and later suffered from psychological trauma and stopped attending most of her classes. The issue of students either dropping out of their courses or transferring to colleges outside rocket range has had significant financial implications for Sapir College, which depends, in part, on student fees to fund itself.[1035]

1668. Similar statements were made during a telephone interview on 26 June 2009, by the Community Director of Kibbutz Nir-Am and Kibbutz Gevim, Avi Kadosh, who stated that families with young children were increasingly leaving their homes in the kibbutzim to move to safer places and that this made it increasingly difficult to run the education system on the kibbutz.

1669. During a telephone interview on 2 July 2009, Dalia Yosef of the Sderot Resiliency Center stated:

> The children do not have a routine life, in a safe place, and it affects their ability to learn and to be educated. Schools are not safe places for them, nor are their homes. The stress affects their behaviour and how it impacts them. There is increasing violence in the schools as the children act out. There is a lot of stress in the air and it is difficult to exist for a long time in this situation without being affected. It is of course the same for the children in Gaza. They do not have a chance to have a normal life.

6. Impact on the economic and social life of communities

1670. In the interviews conducted by the Mission, it was clear that the impact on communities that had only recently come under the effect of rocket and mortar fire was different to that on those that had been living in that situation for the past five to eight years.

1671. In towns such as Ashdod, Yavne and Beersheba, which experienced rocket strikes for the first time during the military operations in Gaza, there was temporary displacement of some of its residents, who chose to move northwards out of the range of fire for the duration of the operations. In these towns, brief disruption to the economic and social life of the communities was experienced.

[1033] Mission also notes the submission of 29 July 2009 by Dr. Yechiel Lasry, mayor of Ashdod which quotes the head of the Ashdod Psychology Center, Mr. Haviv Galili, as saying that it took 6-8 weeks for a number of a classes "to return to stability and normal life".

[1034] Telephone interviews with Ofer Shinar and Julie Chaitin, 25 June 2009; Merav Moshe, 28 June 2009.

[1035] Telephone interview with Merav Moshe, 28 June 2009.

1672. In towns closer to the Gaza border, such as Sderot, the recent rocket fire has merely consolidated an exodus started in the previous years. In an interview with the Mission, Eli Moyal, former mayor of Sderot, stated:

> Over 15 per cent of the people living in Sderot have left, moved away permanently. Mainly it was the people who could afford to move and it meant that a lot of business closed down – almost half the businesses that existed in 2001 have closed down. It also meant that the municipality was losing its tax base and it made it much more difficult to supply the services that we are supposed to. This includes kindergartens and other educational services.

1673. Stewart Ganulin, on behalf of Hope for Sderot, a non-profit organization which assists, financially and practically, those injured by rocket fire and families who have lost a member, stated to the Mission on 8 July 2009, that the organization alone was helping 576 people from 133 families of the 3000 families on welfare in Sderot.

1674. The kibbutzim surrounding Sderot have also been particularly affected because tourists from abroad and other parts of Israel no longer come to stay there. Yeela Ranan, interviewed on 9 July 2009, stated that house prices in Sderot had fallen by 50 per cent. Both residents of Sderot and the surrounding kibbutzim commented on the downturn in their livelihood resulting from living in a community under rocket and mortar fire.

7. The unrecognized Palestinian Arab Bedouin villages of the Negev

1675. The unrecognized villages in the Negev are Palestinian Arab Bedouin villages that are not recognized by Israel[1036] and have been subjected to demolitions by the Israeli authorities. They are not marked on any commercial maps and are ineligible for municipal services such as connection to the electricity grid, water mains or for garbage collection. According to the Director of the Regional Council for the Unrecognized Villages, Atwa Abu Fraih, in an interview on 30 July 2009, approximately 90,000 people live in these villages, including 17,000 schoolchildren.

1676. According to Physicians for Human Rights - Israel, these villages are in range of rocket fire but have no early warning system, nor have any shelters been built to protect the residents who live there.[1037] As much was confirmed by the Director of the Regional Council of Unrecognized Villages, Atwa Abu Fraih, who told the Mission that most of the structures in the villages were made of zinc, including all the schools and that none of the unrecognized villages had any shelters from rocket or mortar fire. He also pointed out that none of the unrecognized villages was equipped with the early warning alarm system though seven recognized villages did. Unrecognized villages close to either recognized villages with an early warning system or Jewish Israeli towns could hear the alarms. He stated, however, that the early warning system was of little use if there were no shelters. The Director of the Regional Council stated that, if a rocket landed in the unrecognized villages, the consequences would be "disastrous".

[1036] Between 1948 and 1966, Israel imposed a military administration on Palestinian Israelis in the region and designated 85 per cent of the Negev as "State land." All Bedouin habitation was retroactively termed illegal and consequently remains, with few exceptions, unrecognized under Israeli planning criteria and therefore subject to demolition and appropriation into regional plans under Jewish Agency criteria; (i.e., exclusively for "Jewish nationals").

[1037] Telephone interview with Wasim Abas, Physicians for Human Rights – Israel , 8 July 2009. See also "Israeli Arabs on Gaza firing line lack shelter", *MSNBC.com*, 4 January 2009.

1677. While no fatalities or injuries have been recorded in these communities, Physicians for Human Rights – Israel has confirmed that a number of the residents of these villages have been referred for psychological treatment in the aftermath of rocket and mortar strikes.

8. Recognized Palestinian towns and villages in southern Israel

1678. Where the towns and villages predominantly populated by Palestinian citizens of Israel are recognized (and consequently eligible for municipal services such as electricity), they still lack the public shelters commonly found in towns and villages populated predominantly by Israel's Jewish citizens.

1679. Rahat is located 24 kilometres from Gaza and has a population of 45,000 residents. It has no public shelters and few houses have secure rooms. On 30 January 2009, a rocket exploded approximately half a mile from Rahat. The Government of Israel, in a report in the *Associated Press*, stated that it was conducting a public information campaign in Arabic in the broadcast and print media; according to residents, however, this was of little use if public shelters were not made available.[1038]

1680. In its recent paper, "The Operation in Gaza: Factual and Legal Aspects", the Government of Israel stated that the

> Israeli authorities took a variety of measures to protect its citizens and to reduce the risk to civilians, with special attention being given to sensitive facilities, such as educational institutions and hospitals. These efforts included the establishment of public shelters and fortifications of public institutions, as well as the instruction of the population in risk how to act in times of emergency.[1039]

1681. The Mission is concerned about the disparity in treatment of Jewish and Palestinian citizens by the Government of Israel in the installation of early warning systems and provision of public shelters and fortified schools between its Jewish and Palestinian citizens. This is particularly noticeable in the case of the unrecognized villages, some of which are within the now increased zone of rocket fire, and which have no means of protection from rocket and mortar attacks.

[1038] "Israeli Arabs on Gaza firing line lack shelter", *MSNBC.com*, 4 January 2009.

[1039] "The operation in Gaza…", para. 42.

I. Legal analysis and conclusions

1682. The Mission emphasizes the obligation of the Gaza authorities to respect international law (see chap. IV above), and is of the view that this requires the prevention and prosecution of violations of international law occurring within its area of de facto governmental authority.[1040] The issue of accountability is discussed below. The Mission considers that the international humanitarian law norms referred to below are relevant to an analysis of the situation described above.

1683. International law attributes a duty to parties to hostilities to protect and respect civilians. Such a duty is part of customary international law and is codified in treaty law through article 27, paragraph 1, of Geneva Convention IV. Furthermore, combatants have an obligation, under article 48 of Additional Protocol I, to distinguish between civilians and combatants and civilian objects and military objects during the conduct of hostilities. Article 51 (4) of Additional Protocol I explicitly prohibits indiscriminate attacks. Article 51 (6) of Additional Protocol I strictly prohibits reprisals against civilians. The relevant legal provisions are set out above in chapter XVI.

1684. Article 51(2) of Additional Protocol I prohibits "acts or threats of violence the primary purpose of which is to spread terror among the civilian population". Article 13 (2) of Additional Protocol II contains a similar prohibition. Article 4 (2) (d) of Additional Protocol II prohibits acts of terrorism as a violation of the "fundamental guarantees" of humane treatment under the Additional Protocol.[1041] The same rule is considered a rule of customary law in international and non international armed conflicts.[1042] Such a crime has been charged in indictments both before the International Criminal Tribunal for the former Yugoslavia and the Special Court for Sierra Leone.

1685. At the Special Court for Sierra Leone, Trial Chamber 1, in the case of *Prosecutor v. Sesay et al.*, held that the elements of the above-mentioned offence were as follows:

(i) Acts or threats of violence;

(ii) The Accused wilfully made the civilian population or individual civilians not taking direct part in hostilities the objects of those acts or threats of violence;

[1040] The Mission draws attention to the 'Trail Smelter' arbitration in which the arbitration tribunal found that "under the principles of international law....no state has the right to use or permit the use of its territory in such a manner as to cause injury [by fumes] in or to the territory or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence"; Trail Smelter Arbitration, (1938/1941) 3 R.I.A.A. 1905.

[1041] This prohibition was, in turn, based on article 33 of Geneva Convention IV, which prohibited "all measures of intimidation or of terrorism" of or against protected persons.

[1042] Study on international humanitarian law, ICRC, Vol. 1, Rule 2.

(iii) The acts or threats of violence were carried out with the specific intent of spreading terror among the civilian population.[1043]

1686. The Appeals Chamber of the ICTY in *Prosecutor v. Galic* held that:

> The acts or threats of violence constitutive of the crime of terror shall not however be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof. The nature of the acts or threats of violence directed against the civilian population can vary; the primary concern […] is that those acts or threats of violence be committed with the specific intent to spread terror among the civilian population.[1044]

J. Findings

1687. There is no justification in international law for the launching of rockets and mortars that cannot be directed at specific military targets into areas where civilian populations are located. Indeed, Palestinian armed groups, among them Hamas, have publicly expressed their intention to target Israel civilians. The al-Qassam Brigades, on their website, claimed responsibility for the deaths of each of the Israeli civilians killed by rocket fire during the operations in Gaza.[1045]

1688. From the facts it ascertained, the Mission finds that the Palestinian armed groups have failed in their duty to protect and respect civilians. Even though the al-Qassam Brigades and other armed groups in Gaza have recently claimed that they do not intend to harm civilians, the fact that they continue to launch rockets at populated areas without any definite military targets and are aware of the consequences to civilians indicates an intent to target civilians. Furthermore, the launching of unguided rockets and mortars breaches the fundamental principle of distinction: an attack must distinguish between military and civilian targets. Where there is no intended military target and the rockets and mortars are launched into civilian areas, they constitute a deliberate attack against the civilian population.

1689. Given the apparent inability of the Palestinian armed groups to aim rockets and mortars at specific targets and, the fact that the attacks have caused very little damage to Israeli military assets, it is plausible that one of the primary purposes of these continued attacks is to spread terror – prohibited under international humanitarian law -among the civilian population of southern Israel.

[1043] *Prosecutor v. Sesay et al.*, Trial Judgment, 2 March 2009.See also *Prosecutor v. Galic*, Trial Judgment, 5 December 2003 at para. 133 and Appeal Judgment, 30 November 2006 at para. 104. The *Galic* Judgments use the words "with the primary purpose", rather than with the " specific intent".

[1044] *Prosecutor v. Galic*, Appeal Judgment, 30 November 2006, para. 102. This position was endorsed by the Appeals Chamber of the SCSL in *Prosecutor v. Fofana et al.*, Appeal Judgment, 28 May 2008, para. 351.

[1045] http://www.alqassam.ps/arabic/statments1.php?id=4066; http://www.alqassam.ps/arabic/statments1.php?id=4088; http://www.alqassam.ps/arabic/statments1.php?id=4098. See also, "South under fire; 2 Israelis killed", Ynet News, "29 December 2008.

1690. The above view is supported by public statements of the armed groups, such as that made by Hamas on 5 November 2008. Following an Israeli raid in Gaza[1046] which resulted in the death of five Hamas militants[1047], a Hamas spokesman stated "The Israelis began this tension and they must pay an expensive price… They cannot leave us drowning in blood while they sleep soundly in their beds".[1048] As noted in chapter XVI, reprisal attacks cannot be carried out against a civilian population.

1691. From the facts available, the Mission finds that the rocket and mortars attacks, launched by Palestinian armed groups in Gaza, have caused terror in the affected communities of southern Israel and in Israel as a whole. Furthermore, it is the Mission's view that the mortars and rockets are uncontrolled and uncontrollable, respectively. This indicates the commission of an indiscriminate attack on the civilian population of southern Israel, a war crime, and may amount to crimes against humanity. These attacks have caused loss of life and physical and mental injury to civilians and damage to private houses, religious buildings and property and have eroded the economic and cultural life of the affected communities.

XXV. REPRESSION OF DISSENT IN ISRAEL, RIGHT TO ACCESS TO INFORMATION AND TREATMENT OF HUMAN RIGHTS DEFENDERS

1692. In the course of its investigations, including in meetings, submissions and public testimonies, the Mission received allegations that sources of criticism of actions by Israel during and following the military operations of December 2008-January 2009 from inside Israel were subjected to attempted or actual repression, and that the rights of freedom of association and expression for individuals and groups had been violated. In this regard, concerns were also raised about the denial of access to the media and to human rights monitors prior, during and after the military operations in Gaza.

1693. The Mission conducted telephone interviews with people who participated in protests or who worked for non-governmental organizations working on human rights inside Israel. Shir Hever of the Alternative Information Center appeared at the public hearings held in Geneva on 6 July 2009 to speak specifically about the issue of repression of dissent inside Israel. This issue was also discussed in meetings with and submissions by human rights organizations, journalists and other relevant individuals.

1694. The Mission was unable to conduct on-site investigations owing to the decision by the Government of Israel not to cooperate with the Mission. Accordingly, it was not able possible to obtain the views of the police and other State authorities involved in some of the incidents. The Mission has taken this into account in its assessment of the available information.

[1046] The Israeli forces declared that the incursion was aim at destroying a tunnel which they believed was being dug to kidnap Israeli soldiers.

[1047] One militant was killed in the fighting while four others were killed following an Israeli air strike on rocket launchers after 30 Qassam rockets had been launched into Israel following the Israeli incursion.

[1048] "Six die in Israeli attack over Hamas tunnel under border to kidnap soldier", *The Times*, 6 November 2008.

1695. The Mission addressed questions to the Government of Israel regarding Israeli citizens arrested during or as result of demonstrations during the military operations in Gaza. The Mission did not receive any reply to its questions.

1696. The Mission has identified five areas warranting further examination: (a) the matters arising from protests inside Israel; (b) the judicial responses to these actions; (c) the interrogation of political activists by the General Security Services (*Shabak*); (d) freedom of association and the treatment of human rights organizations inside Israel and (e) access of the media and of human rights monitors to Gaza prior to, during and after the military operations.

A. Protests inside Israel

1. General

1697. While the majority of Jewish citizens in Israel supported military action in Gaza,[1049] demonstrations and vigils were held across Israel – daily in some areas - against the military operations. As might be expected, smaller protests took place on weekdays, while larger ones were held on on the weekends. Protests took place in numerous towns and villages across Israel, the most important being: the demonstration of 150,000 people in Sakhnin,[1050] the largest demonstration of Palestinian Israelis since 1948; a 100,000-strong protest in Baqa al Gharbiyah in the "Triangle";[1051]a demonstration of 15,000 people in Naqab; a protest by more than 10,000 people in Tel Aviv and protests of a similar size in Haifa. Protests were also witnessed in southern localities, including Beersheba and Ararah.[1052] Daily protests took place not only in towns and villages populated mainly by Palestinian citizens of Israel, but also in Haifa[1053] and Tel Aviv.

1698. According to information received by the Mission, the protests against the Israeli military operations in Gaza were, in the main, attended by Palestinian Israelis; even though protests usually also included Jewish Israelis. In Tel Aviv, Jewish Israelis reportedly made up 30 to 40 per cent of the larger weekend demonstrations.[1054] The Mission took note of reports that in areas where mainly Jewish Israelis resided, such as Tel Aviv and Beersheba, counter protests were sometimes organized or spontaneously formed. While there were verbal confrontations between the two groups of protesters, physical violence was rare.

[1049] "Poll shows most Israelis back IDF action in Gaza", *Haaretz*, 15 January 2009; "Israeli Arabs Recoil at Attacks on Gaza as Allegiance to Their Country Is Strained", *New York Times*, 20 January 2009.

[1050] "Worldwide protests denounce Israel", *Al Jazeera*, 3 January 2009.

[1051] The area commonly known as the "Triangle" is a concentration of Palestinian Israeli towns and villages adjacent to the Green Line, located in the eastern Sharon plain. From the air, the towns and villages form a triangle, thus the name.

[1052] Telephone interviews with Leah Shakdiel, 24 June 2009; Atwa Abu Fraih, 30 July 2009.

[1053] Significantly, Haifa has a sizeable Palestinian Israel population. In 2003, the Israeli Central Bureau of Statistics found that 9 per cent of the population of Haifa was Palestinian Israeli; see (www.cbs.gov.il/statistical/arab_pop03e.pdf_.

[1054] Telephone interview with Haggai Matar, 24 July 2009.

2. Police conduct

1699. According to information received by the Mission, in areas of northern Israel populated mainly by Israel's Palestinian citizens (such as Sakhnin, Nazareth and Baqa al-Gharbiyah), the police did not enter the town during the protests but remained on the outskirts. This decision was apparently taken in coordination with town authorities,[1055] on the agreed view that the protests would be more orderly if the police remained out of sight.

1700. In Tel Aviv and Haifa, the police tended to be visible to protesters.[1056] With a few exceptions (see below) police interference was limited. In Haifa, smaller demonstrations were attended by almost as many police officers as protesters, and the number of cameras being used by the police to record the protest had an intimidating effect.[1057] Police blocked off streets around the demonstrations in both cities, with the consequence that protests took place in near deserted areas; one protester remarked that "it was as though we were demonstrating to ourselves".[1058] While the media had free access, the Mission's attention was drawn to the fact that there was little coverage of the protests by the international or Israeli media.

1701. In the south, in towns populated by Palestinian Israelis, police action mirrored that taken in the North; remaining on the outskirts of the town while the protests continued inside. There were reports, however, of significant difficulties for protesters in obtaining permits, even where the protests were being staged in areas outside the military zone in effect in the areas around Gaza. This compared unfavourably with reports from Tel Aviv and Haifa, where police generally allowed protests, regardless of whether permits had been obtained.

1702. In areas in the south populated by Jewish Israelis, such as Beersheba, police maintained a presence near the demonstrators and were apparently less tolerant of the protests against the military operations in Gaza than their colleagues policing protests in the north. One protester stated that this was because dissent in the south was an embarrassment to Israel, which claimed that the military operations in Gaza were motivated by the need to defend southern Israel.[1059] It should be noted, however, that there were significant episodes of counter protest in Beersheba, which had come under rocket fire during the operations in Gaza.[1060]

[1055] Telephone interviews with Ameer Makhoul, 27 July 2009; Hassan Tabaja, 29 July 2009; "Israeli Arabs Recoil at Attacks on Gaza as Allegiance to Their Country Is Strained", *New York Times*, 20 January 2009.

[1056] Telephone interviews with Ameer Makhoul, 27 July 2009; Sahar Abdo, 26 July 2009; Hakim Bishara, 29 July 2009.

[1057] Telephone interview with Sahar Abdo, 26 July 2009.

[1058] Telephone interview with Ronen Shamir, 22 July 2009. The Mission acknowledges that there may be legitimate public security and order concerns that require such action but has not been able to discuss them with the police authorities owing to the refusal of Israel to cooperate with the Mission.

[1059] Telephone interview with Haggai Matar, 24 July 2009.

[1060] Telephone interviews with Leah Shakdiel, 24 June 2009; Merav Moshe, 28 June 2009.

3. Arrests of protesters

1703. According to statistics that Adalah obtained from the police, 715 protesters were arrested inside Israel.[1061] This number included 277 people arrested in Jerusalem. Unfortunately, the statistics make no distinction between East and West Jerusalem.[1062]

1704. The Mission notes that, given the large number of people involved in the demonstrations, which it estimates to be in the hundreds of thousands, relatively few arrests were made. It was, however, struck by reports that no arrests seem to have been made of people participating in counter-demonstrations supporting the military operations in the Gaza Strip.

1705. According to the police statistics obtained by Adalah, 34 per cent of those arrested were under the age of 18.[1063] Of those charged with an offence, the majority were charged with "attacking police officers", "unlawful assembly" and "disturbing public order".[1064] While Adalah noted that only in a few cases were those arrested charged with "endangering life on a public road",[1065] the Meezan Center for Human Rights in Nazareth noted that a large number of those arrested in the northern areas mainly populated by Palestinian Israelis had been charged with that offence.[1066]

4. Physical violence against protesters

1706. The Mission received several submissions about the beating of protesters by the police. These incidents appeared to have been a disproportionate response by the police either when they believed that the protesters were not complying, or not complying fast enough, with their orders and, in some instances, where protesters were themselves breaking the law (for example, by throwing stones at the police).

Ben Gurion street, Haifa, 1 January 2009

1707. On 1 January 2009, a silent candle-light vigil was held on Ben Gurion street in Haifa. A number of prominent Palestinian Israeli actors were present at the vigil, including Hanan Helu and Saleh Bakri. In a telephone interview on 29 July 2009, Mr. Bakri stated that, the police and members of the Israeli special forces requested that the group move, which it did before sitting further down the street. Protesters were then confronted by the police and beaten about their lower bodies; some of them were arrested.[1067] According to Adalah, the police refused to provide medical assistance to the injured protesters who were detained.[1068] Those who were arrested and taken to the police station reported that the police verbally abused them and made sexual comments about female members of their families. At the police station, Mr. Bakri, well known in Israeli and Palestinian public life, was made to stand without moving for 30 minutes facing the Israeli flag while police officers took photographs and filmed him.[1069]

[1061] Adalah, "Protest Prohibited: Restricting the Freedom of Speech by Law Enforcement Authorities during the Gaza Military Operation", (Hebrew), August 2009 (the "August 2009 Adalah report"), p. 2.

[1062] The Mission considers East Jerusalem part of the Occupied Palestinian Territories, with the consequence that had the Mission been able to distinguish arrests in East Jerusalem from those in West Jerusalem, the former would have been included in the statistics of arrest in protests occurring in the West Bank.

[1063] Adalah report of August 2009, p. 6.

[1064] Ibid.

[1065] Ibid, p. 2.

[1066] Telephone interview with Hassan Tabaja, 29 July 2009.

[1067] Telephone interview with Saleh Bakri, 29 July 2009.

Egyptian embassy, Tel Aviv, 29 December 2008

1708. On 29 December 2008, approximately 120 people protested in the vicinity of the Egyptian embassy in Tel Aviv. They were protesting against what they believed to be Egyptian support for the action by Israel in Gaza. The demonstration was being held in a designated area, as indicated both by Israeli police and, reportedly, members of the Israeli special forces at the scene.[1070] According to one protester, soon after the protest started, people passing by started to verbally abuse the protesters and waved Israeli flags at them. The police and members of the special forces asked the protesters to leave.[1071] According to the same protester, the police started to hit the other protesters about the lower body with sticks in an apparent effort to disperse them.[1072] Another protester stated that she had been released by the police once they realized that she was Jewish, while the Palestinian Israeli protesters were arrested.[1073]

Kofor Cana and Umm al-Fahem (dates unknown)

1709. During the Israeli military operations in Gaza, protests were held in Kofor Cana[1074] and Umm al-Fahem,[1075] both throughout the week and on weekends. According to Hassan Tabaja, a lawyer at the Meezan Center for Human Rights, in both places there were instances of police violence and use of tear gas in reaction to stone throwing by some of the younger protesters. There were reports that the police also beat bystanders.[1076] Those arrested reported having been beaten both in police vans and at the police station, subjected to racial abuse and sexual comments made about female members of their families.[1077]

[1068] Adalah, news update, 2 January 2009.

[1069] Telephone interview with Saleh Bakri, 29 July 2009.

[1070] Telephone interview with Sahar Abdo, 26 July 2009.

[1071] Telephone interview with Sahar Abdo, 26 July 2009.

[1072] Telephone interview with Sahar Abdo, 26 July 2009; see also "6 demonstrators protesting Israeli Gaza op arrested in Tel Aviv", *Haaretz*, available at http://www.haaretz.com/hasen/spages/1050980.html.

[1073] "6 demonstrators protesting Israeli Gaza op arrested in Tel Aviv", *Haaretz*.

[1074] A Palestinian Israeli town in the Galilee with a population of approximately 20,000 people.

[1075] A Palestinian Israeli town in the Haifa District with a population of just under 45,000 people.

[1076] Telephone interview with Hassan Tabaja, 29 July 2009. Mr. Tabaja, as part of his work with the Meezan Center for Human Rights, helped arrange representation for those arrested.

[1077] Telephone interview with Hassan Tabaja, 29 July 2009.

5. Other inappropriate conduct

1710. The Mission was informed that permission was denied for or attempts were made to prevent demonstrations, such as the "Critical Mass" bicycle protest on 1 January 2009 in Tel Aviv which was barred from moving beyond Rabin Square;[1078] in another instance, a bus in which protesters were travelling to participate in demonstrations was prevented by the police from reaching its destinations in Tel Aviv;[1079] the bus driver was intimidated by the police, his licence confiscated and the bus was impounded. On 16 January 2009, two buses of protesters accompanying a truck of medical supplies for Gaza donated by Physicians for Human Rights Israel were stopped near Ashkelon and prevented from entering the military zone, where gatherings of more than four people were not permitted for security reasons. The police, however, confiscated the drivers' licences, told the drivers to follow them and took the licences to Tel Aviv, where the drivers could collect them.[1080] The drivers were reportedly told that, if they proceeded further, they would lose their licences.

1711. In the case of one demonstration planned in Tel Aviv, the police had placed a condition that no Palestinian flags would be allowed at the demonstration. The organizers approached the Court on the grounds that there was no such restriction in the law. The police issued a permit before the case was decided, and the demonstration was held with Palestinian flags.[1081] Other demonstrations with protesters holding Palestinian flags were also held in Tel Aviv without any interference by the police.[1082]

B. Judicial responses following the arrests of protesters

1. Detention pending trial

1712. In his public testimony before the Mission, Shir Hever of the Alternative Information Center highlighted a worrying new trend in the way that arrests of protestors were dealt with in the Israeli legal system. In many cases, the Prosecutor requests that the Court order that the protester be detained pending conviction or release and that these submissions are generally accepted by the courts. According to Hever, detention pending trial is usually reserved for defendants thought to be dangerous, not for people arrested during protests. This has resulted in protesters being detained for weeks and months at a time.[1083]

1713. Hassan Tabaja stated that those arrested often faced "super-charged" indictments, where the most serious possible charge had been selected by the Prosecution.[1084] For example, for protesting on a road, instead of being charged with disturbing the peace or an illegal gathering, people were sometimes charged with "endangering life on a public road", a charge that carries a sentence of 20 years. The severity of the charge greatly increases the chance of being detained pending trial.

[1078] Telephone interview with Haggai Matar, 24 July 2009.

[1079] Telephone interview with Sahar Abdo, 26 July 2009.

[1080] Telephone interview with Ran Yaron, 22 July 2009.

[1081] Telephone interviews with Haggai Matar, 24 July 2009; Avner Pinchuk (ACRI), 29 July 2009.

[1082] Telephone interview with Hakim Bishara, 29 July 2009.

[1083] Testimony of Shir Hever, Alternative Information Centre, Geneva Public Hearings, 6 July 2009; Yesh Gvul.

[1084] Telephone interview with Hassan Tabaja, 29 July 2009.

1714. On 12 January 2009, the Israeli Supreme Court decided that, given the ongoing military operations in Gaza, it could not allow certain persons to be released on bail.[1085] This decision was subsequently followed by those of the lower courts, where petitions demanding the release of individuals arrested in connection with the demonstrations were refused.[1086]

1715. It is clear from statistics obtained by Adalah from the Israeli police that, of all the protesters arrested; it was the Palestinian Israelis who were disproportionately held in detention pending trial. For example, of the 60 people arrested in the Northern District of Israel (mainly populated by Palestinian Israelis), all were detained pending trial; in Tel Aviv, of the 27 people arrested, none were detained pending trial. According to the Meezan Center for Human Rights in Nazareth, there are still people being detained pending trial following their arrest at the protests against the military operations in Gaza.[1087]

2. Bail conditions

1716. Where people were released, the courts sometimes set bail conditions that affected not only the individual's ability to attend protests, but also, in the case of students, their right to education.

1717. Ran Tzoref, arrested at a protest in Beersheba on 14 January 2009, was reportedly released on the condition that he did not leave his village in northern Israel for two to three months. Not only could he not attend subsequent protests, he could not attend classes at his university either.[1088]

1718. One of the protesters arrested in the demonstration near the Egyptian embassy in Tel Aviv on 29 December 2008 was a student from Tel Aviv University. As part of her bail conditions, the Mission was told that she was not allowed to enter Tel Aviv for one month, resulting in her being unable to attend classes.[1089]

C. The interrogation of political activists by the General Security Services

1719. During the Israeli military operations in Gaza, members of Arab political parties and activists in various non-governmental organizations were invited in for interrogation by the General Security Services, commonly known as the Shabak.

[1085] The State of Israel v. Anonymous, 12 January 2009, Supreme Court Decision, 459-09; August 2009 Adalah report, p. 35.

[1086] August 2009 Adalah report, p. 15.

[1087] Telephone interview with Hassan Tabaja, 29 July 2009.

[1088] Telephone interview with Haggai Matar, 24 July 2009.

[1089] Telephone interview with Sahar Abdo, 26 July 2009.

1720. According to Adalah, the Shabak incorrectly informed those invited that they were required by law to come. Ameer Makhoul, the Director of Ittijah and Chairperson of the Popular Committee for the Protection of Political Freedoms, declined the invitation to the interrogation because he was not legally required to do so. He stated that, shortly afterwards, police officers arrived at his office and took him to the interview.[1090]

1721. Mr. Makhoul was taken to the Shabak headquarters in Tel Aviv, where he was kept for four hours, during which time, he was questioned about the people he knew and their whereabouts. . On refusing to answer, he was told that, if he continued his political activities, he would be sent to prison and that, if he wished to go to Gaza, arrangements could be made to send him there. During his interview, it became apparent that the Shabak was aware of his address, and the car he drove, and referred to a speech that he had made in Haifa on 29 December 2008.

1722. The Mission received reports of 20 prominent activists and political figures within the Palestinian community being called in for interrogation by the Shabak and being questioned about their political activities.[1091] It has also received reports of younger political activists having been taken for interview and asked to collaborate with the Israeli authorities. In the case of student activists, the offer of collaboration was accompanied by the threat of arrest or of future difficulties in continuing their studies.[1092]

1723. According to those interviewed, the summoning and indeed taking of activists for interrogation by the Shabak created a climate of intimidation against dissent in Israel. Many activists appear to have been "invited" for interview following their attendance at protests against the military operations in Gaza and their presence at protests was noted by those interviewing them.[1093]

D. Freedom of association and treatment of human rights organizations inside Israel

1. New Profile

1724. Israeli authorities initiated an investigation into activists working with New Profile, a non-governmental feminist organization, accusing them of inciting Israelis to avoid military service. While "incitement to draft dodging" is an offence under Israeli law, it was the first time that any group had been investigated for that offence.[1094]

1725. On 26 April 2009, Israeli authorities raided the homes of six activists and seized their computers, detaining the activists and summoning 10 others for interrogation.[1095] Some activists were detained and interrogated about their ideological and political views; some were released on the condition that they have no contact with other members of their organization.[1096]

[1090] Telephone interview with Ameer Makhoul, 27 July 2009; *Adalah*, news update, 2 January 2009.

[1091] Telephone interview with Ameer Makhoul, 27 July 2009.

[1092] Telephone interview with Ameer Makhoul, 27 July 2009.

[1093] Telephone interview with Ameer Makhoul, 27 July 2009. See also *Adalah* news update, 2 January 2009.

[1094] "Web site for IDF draft dodgers faces criminal probe", *Haaretz*, 15 September 2008.

[1095] "Israel's war against youth", *The Guardian*, 5 May 2009.

1726. As part of their investigation into New Profile, a search warrant was issued for the offices of HaMoked, a non-governmental human rights legal organization, for which a member of New Profile had previously worked. According to a published letter from New Profile's attorney to the Deputy Attorney General of Israel, the breadth of the warrant meant that the investigators were able to search through legally privileged material.[1097]

2. Breaking the Silence

1727. On 15 July 2009, Breaking the Silence, an Israeli non-governmental organization of veteran Israeli soldiers that collects the testimonies of soldiers who serve in the occupied territories, published a booklet entitled "Soldiers' Testimonies from Operation Cast Lead, Gaza, 2009". The booklet contained testimonies of 54 soldiers who had served in Gaza during the military operations. On its website, Breaking the Silence, stated that the testimonies revealed "gaps between the reports given by the army following January's events; the needless destruction of houses; firing phosphorous in populated areas and an atmosphere that encouraged shooting anywhere."[1098]

1728. Breaking the Silence's publication was widely reported in the media.[1099] The Government of Israel, through the IDF Spokesman Unit, stated that the report comprised "anonymous and general testimonies, without investigating their details or credibility", and that "a considerable number of the testimonies in this report are also based on hearsay and word of mouth".[1100] The Unit stated that the Israeli military authorities were committed to investigating thoroughly any claims made, where there was sufficient information to do so, and that "from testimonies which have been published, including those in this report, and from the investigations conducted by the IDF into the operation, it is clear that IDF soldiers operated in accord with international law and the orders they received, despite the complex and difficult fighting."[1101]

1729. On 17 July 2009, the *Jerusalem Post* reported that Breaking the Silence's published donor list included several European Governments.[1102] Later that week, *Haaretz* reported that the Israeli Ambassador to the Netherlands had met with the Director-General of the Foreign Ministry of the Netherlands to complain about that country's funding of Breaking the Silence, urging that the funding be terminated.[1103] On 29 July 2009, *Haaretz* reported that, in a meeting with the

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[1096] Letter to the Deputy State Prosecutor, New Profile, 27 April 2009.

[1097] Letter to the Deputy State Prosecutor, New Profile, 27 April 2009.

[1098] http://www.breakingthesilence.org.il/oferet/news_item_e.asp?id=1.

[1099] For example, "Breaking the silence on Gaza abuses", *BBC News*, 15 July 2009,; "Report claims Israelis used Palestinians as human shields", *CNN*, 15 July 2009.

[1100] www.mfa.gov.il/MFA/Government/Communiques/2009/Reaction_to_Breaking_Silence_report_15_Jul_2009.

[1101] Ibid.

[1102] "Europeans funding 'Breaking the Silence', *Jerusalem Post*, 17 July 2009.

[1103] "Group that exposed 'IDF crimes' in Gaza slams Israel bid to choke off its funds", *Haaretz*, 26 July 2009.

Ambassador of the United Kingdom to Israel, the Deputy Director-General of the Foreign Ministry of Israel asked "the reasons behind Britain's funding of the group and whether the money was used to fund the recent report on Operation Cast Lead."[1104]

1730. On 31 July 2009, the Jerusalem Post published an article in which it reported that senior Israeli officials were looking into whether it would be possible to ban donations from foreign governments to political NGOs.[1105] On 2 August 2009, *Haaretz* reported that Israel had asked the Government of Spain to terminate its funding of Breaking the Silence.[1106]

1731. Breaking the Silence issued a statement in which it accused the Foreign Ministry of a "witch-hunt", saying that it testified to the erosion of the "democratic culture" in Israel.[1107]

1732. The Mission is concerned that the actions of the Government of Israel with regard to these organizations may have the effect of intimidating other Israeli organizations working on documenting and reporting human rights violations. The Mission underlines the importance that these organizations, who carry out essential work in a difficult environment, be able to operate freely.

E. The access of the media and human rights monitors to Gaza prior to, during and after the military operations

1733. The decision by Israel to deny access to the media and international human rights monitors to Gaza during -and indeed prior- to the start of its military operations in Gaza on 27 December 2008, created a storm of protest from the international media and human rights NGOs.[1108] Some human rights organizations, including Human Rights Watch and B'Tselem, are still denied access to Gaza to this day.[1109]

1734. The Mission notes that, during the military operations in Gaza, there were a number of Palestinian human rights organizations conducting independent monitoring of international human rights and international humanitarian law. As noted elsewhere in the present report, the Mission found the work of these organizations to be of very a high professional standard and one that deserved recognition given the extremely difficult circumstances under which they usually operated, particularly during the Israeli military operations. The Mission is of the view that the presence of international human rights monitors would have been of great assistance in not only investigating and reporting but also in the publicizing of events on the ground.

[1104] "Israel targets U.K. funding of group that exposed 'IDF crimes' in Gaza", Haaretz, 29 July 2009.

[1105] "Israel aims to outlaw foreign gov't funds for subversive NGOs", Jerusalem Post, 31 July 2009.

[1106] "Israel asks Spain to stop funding group that reported IDF 'crimes' in Gaza", *Haaretz*, 2 August 2009.

[1107] "Israel aims to outlaw foreign gov't funds for subversive NGOs", *Jerusalem Post*, 31 July 2009.

[1108] For example, "Israel: allow media and rights monitors Access into Gaza", Human Rights Watch, 5 January 2009; "Israel puts Media Clamp on Gaza", *The New York Times*, 7 January 2009; and "Media Frustration over Gaza ban grows", *The Guardian*, 14 January 2009.

[1109] "Israel: end ban on human rights monitors", B'Tselem press release, 22 February 2009; Email communication between the Mission and Human Rights Watch, 2 August 2009.

1. Media

1735. Israeli military authorities stopped allowing foreign journalists into the Gaza Strip, without prior notification to media organizations, on 5 November 2008 when hostilities escalated.[1110] . Israeli citizens, including journalists, have been barred from entering the Gaza strip since the abduction in 2006 of Gilad Shalit, on security grounds. One journalist, Amira Hass, has been arrested on two occasions, in December 2008 and in May 2009, for being in Gaza illegally.[1111]

1736. After the closure, on 5 November 2008, of the Gaza Strip to journalists (among other groups, including human rights monitors), there was international and domestic protest; the ban was lifted briefly on 4 December 2008, but reinstated the following day. At the start of the military operations in Gaza, Israeli defence officials indicated that there would be a complete ban on access of the media to Gaza for the duration of the operations. On 27 December 2008, the day military operations started, the Israeli authorities imposed a closed military zone inside Gaza and through a 2-kilometre strip around its perimeter.

1737. On 19 November 2008, the heads of many international news organizations, including the BBC, CNN and Reuters, protested against the ban on media access to Gaza in a letter to the then President Ehud Olmert.[1112] On 24 November 2008, the Foreign Press Association petitioned the Supreme Court to rule on the legality of such a ban.[1113]

1738. In an open letter, dated 29 December 2008, the Foreign Press Association stated that the denial of media access to Gaza was

> an unprecedented restriction of press freedom. As a result, the world's media is unable to accurately report on events inside Gaza at this critical time… Despite our protests, the Israeli authorities have refused to let journalists in… Never before have journalists been prevented from doing their work in this way. We believe it is vital that journalists be allowed to find out for themselves what is going on in Gaza. Israel controls access to Gaza. Israel must allow professional journalists access to this important story.[1114]

1739. On 31 December 2008, the Supreme Court ruled on the Association's petition, ordering that the Government of Israel to grant 12 journalists entry into Gaza each time the Erez crossing opened.[1115] On 2 January 2009, the Court amended its order to state that eight journalists, rather than 12, should be admitted whenever the Erez crossing opened.[1116]

[1110] "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

[1111] "Haaretz journalist Amira Hass arrested for illegal stay in Gaza", *Haaretz*, 2 December 2008; and "Haaretz reporter Amira Hass arrested upon leaving Gaza", *Haaretz*, 12 May 2009.

[1112] "Israel: allow media and rights monitors access into Gaza", Human Rights Watch, 5 January 2009.

[1113] "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

[1114] Open Letter, Foreign Press Association, 29 December 2008, available at http://www.fpa.org.il/?categoryId=414

[1115] "Israel: allow media and rights monitors access into Gaza", Human Rights Watch, 5 January 2009.

[1116] "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

1740. On 8 January 2009, the Israeli authorities briefly gave the BBC and two Israeli channels access to accompany Israeli forces into Gaza. On 22 January 2009, access was granted to eight journalists to accompany Israeli forces into Gaza. The media and non-governmental organizations continued to complain about the lack of independent, unfettered access to Gaza.[1117] On the same day, the United Nations Chief of Communications and Public Information called on the Government of Israel to ensure immediate access to the international media to Gaza, stressing the need for "full and independent" coverage of events.[1118]

1741. On 23 January 2009, five days after its unilateral ceasefire, Israel removed all restrictions put in place in early November 2008 and the media was given free access to Gaza.

1742. On 25 January 2009, the Supreme Court of Israel issued its final ruling, overturning the blanket ban and stating that reporters should have access to Gaza "unless the security situation changes drastically in such a way that the Erez crossing has to be closed completely for security reasons, and we assume that this will happen only in dire circumstances of concrete danger".[1119]

1743. There have been various explanations from the Government of Israel. A spokesman from the Embassy of Israel in London, speaking to *Press Gazette*, stated "Gaza is a war zone and so it is very difficult to allow people who are not soldiers in. Their presence might endanger both themselves and our operations there".[1120]

1744. The Director of Press Office of the Government of Israel, Daniel Seaman, stated "Any journalist who enters Gaza becomes a fig leaf and front for the Hamas terror organization, and I see no reason why we should help that".[1121] He was later quoted in the Associated Press as saying for foreign journalists were "unprofessional" and took "questionable reports at face value without checking".[1122]

1745. On 7 January 2009, the Ambassador for Israel to the United Kingdom, Ron Proser, claimed that infighting at the Foreign Press Association about which journalists should be admitted was responsible for the press not entering Gaza;[1123] this was categorically denied by the Association.[1124] On 22 January 2009, *Haaretz* reported a split in the Government of Israel over press access to Gaza, stating the Ministry of Defense and the army had withdrawn their opposition to media entry into Gaza, but that the Prime Minister's Office had ordered that the media ban be maintained.[1125]

[1117] "Allow the news media into the Gaza Strip! Appeal by the world's media and Reporters Without Borders to the Israeli authorities", Reporters Without Borders, 9 January 2009.

[1118] "UN calls on Israel for immediate media access to Gaza", *Merco Press*, 9 January 2009.

[1119] "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

[1120] "Foreign Journalists continue to fight for Gaza access", *Press Gazette*, 7 January 2009.

[1121] "Israel puts media clamp on Gaza", *The New York Times*, 7 January 2009.

[1122] "Foreign Journalists continue to fight for Gaza access", *Press Gazette*, 7 January 2009.

[1123] "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

[1124] Foreign Press Association, 13 January 2009, available at http://www.fpa.org.ii/?categoryId=406.

1746. The media ban, coupled with the comments made by the Director of the Government's Press Office have raised concerns, aired in the media, that the ban was aimed at controlling the narrative of the conflict for political reasons.[1126]

2. International human rights monitors

1747. The denial of access to Gaza had an impact not only on the media, but also international human rights monitors, who required access to report violations and, like journalists, make events in Gaza known to the public. The Mission also notes that the presence of international human rights monitors is likely to have a deterrent effect, dissuading parties to a conflict from engaging in violations of international law.

1748. On 31 December 2008, Amnesty International issued a statement calling for Israel to allow "humanitarian workers and observers" immediate access to Gaza.[1127]

1749. Human Rights Watch requested permission from the Israel military authorities to enter Gaza on 5 January 2009. The request was rejected on 9 February 2009 on the grounds that Human Rights Watch was not registered with the Ministry of Social Affairs.[1128] Human Rights Watch asked for clarification, given that it had never heard of such a requirement, even though it had received permission to enter Gaza on previous occasions, and was unsure of the basis in Israeli law or regulation for such a requirement. To date, Human Rights Watch has yet to receive a response from the Israeli authorities.[1129] At 2 August 2009, it had still not been granted permission by the Israeli authorities to enter Gaza to conduct investigations.[1130]

1750. On 20 January 2009, B'Tselem requested permission from the Israel military authorities for its fieldwork director to enter Gaza; the application was rejected on 29 January 2009.[1131] In a news update dated 19 January 2009, Amnesty International stated that it had made numerous applications to the Israeli authorities to enter Gaza, but had received no response.[1132]

[1125] "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

[1126] For example, "Israel puts media clamp on Gaza", *The New York Times*, 7 January 2009; and "Media frustration over Gaza ban grows", *The Guardian*, 14 January 2009.

[1127] "Israel/ OPT: Immediate access to humanitarian workers and observers essential", Amnesty International, 31 December 2008.

[1128], "Israel: End ban on human rights monitors", B'Tselem press release, 22 February 2009; and Email communication between the Mission and Human Rights Watch, 2 August 2009.

[1129] Ibid.

[1130] Ibid.

[1131] Ibid.

[1132] "Amnesty International team gains access to Gaza", Amnesty International, 19 January 2009.

1751. To date, Amnesty International, Human Rights Watch and B'Tselem have been denied access to Gaza to collect data for their independent investigations into allegation of war crimes committed by both the Israeli forces and Palestinian armed groups.

F. Legal analysis and conclusions

1752. International human rights law, applicable during armed conflict, upholds the right to freedom of expression.

International Covenant on Civil and Political Rights

1753. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) provides that

> 1. Everyone shall have the right to hold opinions without interference.
>
> 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

1754. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

> 1. For respect of the rights or reputations of others.
>
> 2. For the protection of national security or of public order (ordre public), or of public health or morals.

1755. Articles 21 and 22 of ICCPR recognize the right to peaceful assembly and the right to freedom of association, respectively.

1756. Furthermore, article 10 provides that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

1757. This Declaration is also known by its abbreviated name "The Declaration on Human Rights Defenders".

1758. Article 5 of the Declaration recognizes the right (a) to meet or assemble peacefully; (b) to form, join and participate in non-governmental organizations, associations or groups; (c) to communicate with non-governmental or intergovernmental organizations.

1759. Article 6 states that

> Everyone has the right, individually and in association with others:
>
> (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
>
> (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
>
> (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

1760. Article 12 states

> 1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
>
> 2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
>
> 3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

1761. Article 13 of the Declaration recognizes that "Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration."

1. Protests

1762. The information received by the Mission indicates that there was no systematic policy to prevent street demonstrations against the military action being pursued in Gaza. The Mission notes, however, that there were occasions when protesters, reportedly, had difficulty in obtaining permits, particularly in areas populated mainly by Palestinian Israelis, and where the police placed obstacles in the way of protesters seeking to exercise their right to peaceful assembly and freedom of speech.

1763. Owing to the failure to cooperate by the Government of Israel, the Mission does not have sufficient information to determine whether there were sound public order or security reasons for the decisions made by the police. It however takes note of the reports received and urges the Government of Israel to ensure that the police authorities, throughout Israel, respect the rights of all its citizens, without discrimination, including the freedom of expression and the right to peaceful assembly, as guaranteed to them by the International Covenant on Civil and Political Rights.

1764. The Mission views with particular concern the reported instances of physical violence against protesters and other forms of humiliation suffered by protesters at the hands of the police. It reminds the Government of Israel that those deprived of their liberty shall, as provided by article 10 of ICCPR, be treated with humanity and respect for the inherent dignity of the human person.

2. Judicial responses

1765. The Mission does not have sufficient information about individual cases brought to its attention to come to a definitive finding. Nevertheless, the element of discrimination between the and differential treatment of Palestinian and Jewish citizens of Israel by the judicial authorities, as reflected in the reports received, is a substantial cause for concern.

3. Interrogations by the General Security Services

1766. The Mission is concerned about activists being compelled to attend interviews with the General Security Services, in the absence of any legal obligation to do so. More broadly, the Mission expresses its concern at the alleged interrogation of political activists about their political activities. Of the interviews conducted by the Mission, the issue of interrogation by the Shabak was cited most prominently as creating intolerance of dissent in Israel.

4. Freedom of association and treatment of human rights organizations

1767. The Mission is greatly concerned about allegations of hostile retaliatory actions taken against civil society organizations for criticism of the Israeli authorities and for exposing alleged violations of international human rights and humanitarian law during the military operations.

1768. In the case of alleged attempts to interfere with the funding of Breaking the Silence, the Declaration on Human Rights Defenders guarantees the right "to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means". While lobbying foreign Governments to terminate funding does not directly violate this right, such an action, if motivated by a reaction to the organization's exercise of its freedom of expression, would be contrary to the spirit of the Declaration.

5. Access to information: access of media and human rights monitors to Gaza

1769. With regard to the denial of media access to Gaza during the military operations there and the continued denial of access to Gaza to various international human rights monitors to the present day, the Mission notes that the presence of journalists and international human rights monitors aides the investigation and broad public reporting on the conduct of the parties to the conflict and that their presence can dissuade misconduct.

1770. According to the 1995 Johannesburg Principles on National Security, Freedom of Expression and Access to Information[1133], Governments

> may not prevent journalists or representatives of intergovernmental or non-governmental organizations which monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict, except where their presence would pose a clear risk to the safety of others.

1771. The Mission is concerned about the near total exclusion of the media and human rights monitors from Gaza since 5 November 2008. While the media have been permitted access since 23 January 2009, the Mission is very concerned that groups such as Human Rights Watch, Amnesty International and B'Tselem continue to be denied access to the Gaza Strip by the Israeli military authorities and therefore are obstructed in their investigations into alleged violations of law during the military operations. The Mission can see no viable reason for this denial of access.

1772. The Mission observes that Israel, in its actions against political activists, NGOs and the media, has attempted to minimise public scrutiny of its conduct both during its military operations in Gaza and the consequences that these operations have had for the residents of Gaza. The perception that the Israeli authorities, by denying access to the media and human rights monitors, sought to prevent investigation and reporting of the conduct of the operations by the Israeli military seems warranted. The burden of dispelling such a perception rests on the Government of Israel.

[1133] The Principles (E/CN.4/1996/31)were endorsed by the United Nations Special Rapporteur on freedom of opinion and expression, in his reports to the Commission on Human Rights at its fifty-second, fifty-fourth, fifty-fifth and fifty-seventh sessions, and referred to by the Commission in its annual resolutions on freedom of expression every year from 1996.

PART FOUR: ACCOUNTABILITY AND JUDICIAL REMEDIES

XXVI. PROCEEDINGS AND RESPONSES BY ISRAEL TO ALLEGATIONS OF VIOLATIONS BY ITS ARMED FORCES AGAINST PALESTINIANS

1773. Investigations and, if appropriate, prosecutions of those suspected of serious violations are necessary if respect for human rights and humanitarian law is to be ensured and to prevent the development of a climate of impunity. States have a duty under international law to investigate allegations of violations.

1774. As seen in the preceding chapters, the Mission has investigated a large number of allegations of violations and has found that many of them have substance. The Mission was thus obliged to consider the extent to which Israel has complied with its obligations under international law to investigate those alleged violations. The Mission requested information from the Government of Israel on any inquiry it had conducted into the incidents the Mission had investigated, and the conclusions of such inquiries, if any, but did not receive any reply.

1775. Allegations concerning alleged serious violations of human rights law and international humanitarian law emerged almost as soon as the military operations began. Israel claims to have carried out limited investigations into these allegations, some of which are ongoing.

1776. In the aftermath of the military operations, a group of eight Israeli NGOs wrote to the Attorney General, Mr. Meni Mazuz, requesting the establishment of an independent and effective mechanism to investigate allegations of grave violations of the laws of war during the Gaza offensive. They requested that the investigation should also address "the legality of the actual orders and directives given to forces in the field" and held that the Military Advocate General's office was not in a position to carry out a proper investigation because of his personal involvement and that of his office's personnel "during stages of decision-making" in the conflict, which would compromise the neutrality and independence of the investigation.[1134]

1777. In replying to the letter, the office of the Attorney General explained that after the conclusion of the military operations "the IDF began to carry out its operational briefings", which would also examine various events in which civilians were harmed. It did not accept the assertion that the Military Advocate General's dual position, as legal adviser to the military authorities and as a person tasked with ensuring that military personnel charged with breaking the law are tried, disqualified him from participating in the investigation.[1135]

1778. The NGOs sent another letter,[1136] but this time the Attorney General did not reply.

[1134] ACRI letter to the Attorney General of Israel, Mr. Menachem Mazuz, on behalf of nine human rights organizations, dated 20 January 2009, available at: http://www.acri.org.il/pdf/Gaza200109.pdf.

[1135] Reply of Attorney Raz Nizri on behalf of the Attorney General of Israel, dated 24 February 2009, available at: http://www.acri.org.il/pdf/Gaza240209.pdf.

[1136] Second letter to the Attorney General, on behalf of 11 human rights organizations, dated 19 March 2009, available at: http://www.acri.org.il/pdf/gaza190309.pdf.

1779. On 5 February 2009, a group of Israeli scholars and jurists wrote to the Attorney General also requesting the establishment of an independent body to investigate the actions that had taken place during the military operations. The Mission is not aware that they received any reply.

1780. The Mission also saw press statements regarding the opening of investigations into allegations reportedly made by soldiers at the "Rabin" Preparation Program. On 19 March 2009, the Military Advocate General, Brig. Gen. Avichai Mendelblit, instructed the Criminal Investigation Division of the military police to investigate alleged actions by soldiers during the military operations. The decision came in response to a letter sent to him a few weeks earlier by the head of the Rabin program reporting claims made by soldiers about firing at civilians.[1137] Eleven days later the investigation was closed on the basis that the crucial components of the allegations "were based on hearsay and not supported by facts". According to the Israeli armed forces, the investigation found that the soldiers in question had not actually witnessed the alleged events.[1138] In a report released by the Government of Israel in July 2009, two of the incidents investigated were briefly discussed. Not having had access to the outcome of these investigations, the Mission is unable to evaluate the report.[1139]

1781. On 22 April the Israeli armed forces released publicly the results of five investigations carried out by teams headed by officers of the rank of colonel. The same information was later on reproduced in the report issued by the Government of Israel.[1140] The Israeli armed forces stated that the members of the team had had no direct involvement in the chain of command during the military operations in Gaza and had acted with independence, enjoying full access to information, persons and evidence. The process was described as involving "a series of operational investigations".[1141]

1782. According to the same source, the five investigations addressed:

(a) Claims regarding incidents where United Nations and international facilities were fired upon and damaged;

(b) Incidents involving shooting at medical facilities, buildings, vehicles and crews;

(c) Claims regarding incidents in which many uninvolved civilians were harmed;

(d) The use of weaponry containing phosphorous;

(e) Damage to infrastructure and destruction of buildings by ground forces.

[1137] "The IDF Chief of the General Staff refers to claims made at the Rabin preparation center", 23 March 2009; "The IDF Chief Advocate general orders investigation of claims made at the Rabin preparation center", 19 March 2009; both available at http://dover.idf.il/IDF/English/Press+Releases/default.htm.

[1138] "Military Police investigation concerning statements made at the Rabin Center: Based on hearsay", 30 March 2009, available at http://dover.idf.il/IDF/English/Press+Releases/default.htm.

[1139] "The operation in Gaza…", paras. 324-329.

[1140] Ibid., paras. 318-320.

[1141] "Conclusion of investigations…".

1783. The observations and conclusions of these investigations have been addressed elsewhere in this report. The conclusion, as stated in the Israeli armed forces' press release, was that "throughout the fighting in Gaza, the IDF operated in accordance with international law". However, the "investigations revealed a very small number of incidents in which intelligence or operational errors took place during the fighting".

1784. The Israeli armed forces stated that the investigation was lengthy and that some specific issues were still being checked and additional allegations were being investigated. The "experts' investigations", it was emphasized, were not a replacement for the central Israeli armed forces' operational investigation into the entire operation, which was under way and to be concluded in June 2009.

1785. In its response to a report by Amnesty International,[1142] the Israeli armed forces recalled the "number of investigations" it has conducted following the military operations. In addition to those ordered by the Chief of the General Staff, Lt. Gen. Gabi Ashkenazi, the Israeli armed forces stated it was looking at complaints from various sources, and that "in certain cases, the Chief Military Advocate has already ordered the opening of a criminal investigation".[1143]

1786. On 30 July 2009 there were media reports that the Military Advocate General had ordered the military police to launch criminal investigations into 14 cases out of nearly 100 complaints against soldiers about criminal conduct during the military operations. An official comprehensive report publicly released on the same day spoke of 13 cases, but no details of the cases were offered.[1144]

1787. The Mission is not aware of any other investigation or of any other action taken either by the Military Advocate General or the Attorney General in connection with the military operations.

1788. Regarding violence against Palestinians outside the Gaza Strip but in relation to the military operations of December 2008 – January 2009, the Mission has been unable to gather information about any investigations that may be taking place.

A. Israel's system of investigation and prosecution

1789. The Mission considers that in assessing Israel's fulfilment of its duty to investigate regard should be had to its internal legal and judicial systems. In cases of suspected wrongdoing the Israeli armed forces may, by law, carry out investigations through: (a) disciplinary proceedings; (b) operational debriefings (also known as "operational investigations"); (c) special investigations, by a senior officer at the request of the chief of staff; and (d) military police investigations, by the Criminal Investigation Division of the military police.[1145]

[1142] *Israel/Gaza: Operation "Cast Lead": 22 days….*

[1143] "IDF response to Amnesty report", 2 July 2009, available at: http://www.reliefweb.int/rw/rwb.nsf/db900SID/MUMA-7TL866?OpenDocument.

[1144] *The Jerusalem Post*, "IDF orders criminal probes into 14 cases of alleged misconduct", 30 July 2009; "The operation in Gaza…", para. 12.

1. Disciplinary proceedings

1790. Disciplinary proceedings are usually instituted for minor infractions of military discipline and rules, and do not apply to investigations into serious violations of human rights or humanitarian law. They are not relevant to the alleged violations with which the Mission is concerned.

1791. Several actors play a role in this system of investigation and prosecution: the army, the military police, the Military Advocate General and the courts martial.

1792. The Israeli armed forces officially describe the mission of the Military Advocate General's corps as follows:

> The Military Advocate General's Corps' supervises and enforces the rule of law throughout the IDF and provides legal advice to the Chief of Staff and all divisions of the IDF in areas relating to military, domestic and international law. Its mission is to instil the general principles of law and the values of justice in the IDF.[1146]

1793. The Mission notes that the Military Advocate General is a military officer, who provides legal advice to the military and at the same time investigates and prosecutes these same military. It also notes that the Government of Israel insists that, despite being part of the military corps, the Military Advocate General acts with full functional independence.

2. Operational debriefings

1794. Article 539 (A) (a) of the Law on Military Justice defines an operational debriefing as: "a procedure held by the army, according to the army orders and regulations, with respect to an incident that has taken place during a training or a military operation or with connection to them".

1795. The debriefings are reviews of incidents and operations conducted by soldiers from the same unit or line of command together with a superior officer. They are meant to serve operational purposes. Following every military operation "of any kind, a field investigation is conducted in order to examine the performance of the forces and to learn what aspects should be preserved and what aspects should be improved".[1147] They are supposed to be confidential so that soldiers speak openly. The findings are forwarded to the Military Advocate General's office, which may or may not find that there are grounds to suspect that a crime has been committed and order a full criminal investigation. However, if a criminal investigation is opened and the case goes to trial the debriefing cannot be used as evidence in subsequent proceedings (article 539 (A) of the Military Justice Act).

[1145] Law on Military Justice 1954/1955. See also Human Rights Watch, *Promoting Impunity: The Israeli Military's Failure to Investigate Wrongdoing* (June 2005), pp. 39 ff.

[1146] http://dover.idf.il/IDF/English/units/other/advocate/Mission/default.htm.

[1147] "The operation in Gaza…", para. 291.

1796. The use of military debriefings as a regular tool to address incidents emerging from military operations became the rule after an official change of policy was introduced in 2000.[1148] The new policy was consistent with a shift to armed conflict paradigm in addressing the intifada. This change of policy meant that criminal investigations were not necessarily the first step even in the face of credible allegations of serious offences committed by military personnel.

1797. The office of the Military Advocate General can consult the operational debriefing and if it considers that a criminal investigation is warranted on the basis of the testimony of soldiers during the debriefing, it can issue orders to that effect. A criminal investigation must start de novo.

3. Special investigations

1798. The Minister of Defense and the Chief of the General Staff may also appoint an officer or group of officers – often high-ranking officers – to investigate high-profile or sensitive matters. The material gathered in special investigations also remains confidential and may not be used as evidence in court proceedings. However, the special investigator makes findings and formulates recommendations. Criminal investigations can be initiated only after the special investigator's work is complete.

4. Criminal investigations

1799. The Military Advocate General may order the Criminal Investigation Division to open a criminal investigation if he finds that there is "reasonable suspicion" that an offence may have been committed by military personnel.

1800. A summary of the operational debriefings is normally sent to the Military Advocate General's office, but he may ask to view the full notes. To order the opening of a criminal investigation, the Military Advocate General normally consults with a major general (article 539 (A)(b)(4)(b) of the Law on Military Justice). The materials of the operational debriefing will not serve in such a criminal investigation and will remain confidential from the investigative authorities (art. 539 (A)(b)(4)).

1801. A decision by the Military Advocate General to open or not to open a criminal investigation and his decision to indict or not to indict the suspects may be reviewed by the Attorney General. A complainant or an NGO can trigger this process by simply sending a letter directly to the Attorney General. The Supreme Court may be petitioned to review the Military Advocate General's or the Attorney General's decisions.[1149]

[1148] Mission interview with Col. (ret.) Daniel Reisner in Geneva, on 6 July 2009. See also an interview with him when he was Assistant Military Advocate General for international law and head of the Israeli armed forces' International Law Department, in *Promoting Impunity*..., p. 41; see also B'Tselem, "Military police investigations during the al-Aqsa intifada", available at: http://www.btselem.org/English/Accountability/Investigatin_of_Complaints.asp

1802. The investigation by the Criminal Investigation Division should produce a file, which is sent to the Military Advocate General's office for completion. The Military Advocate General may decide to close the file for lack of evidence, return it for further investigation or issue an indictment. If an indictment is issued, the case proceeds to a court martial before the district and the special military courts, which are formed by three to five judges, the majority of whom have to be officers. Decisions are taken by majority vote and need not be reasoned "unless the Military Justice Law prescribes otherwise" (arts. 392–393).

1803. A decision by a district or special court martial can be appealed to the Military Court of Appeals, whose final decision may need to be confirmed by the Chief of General Staff after consultation with the Military Advocate General. Israel reported that in the past the Chief of General Staff had confirmed all sentences presented to him.[1150] Victims or their legal representatives may appeal decisions not to indict to the Military Advocate General and, if unsuccessful, to the High Court of Justice.

B. Legal assessment

1804. Both international humanitarian law and international human rights law establish a clear obligation for States to investigate and, if appropriate, prosecute allegations of serious violations by military personnel whether during military operations or not. This rule finds expression in articles 49 of the First Geneva Convention, article 50 of the Second Geneva Convention, article 129 of the Third Geneva Convention and article 146 of the Fourth Geneva Convention; in articles 2 and 6 of ICCPR and article 6 of the Convention against Torture. The Mission considers the obligations on States to investigate and, if appropriate, to prosecute war crimes and other crimes allegedly committed by their armed forces or in their territory as a norm of international customary law.[1151]

1805. International humanitarian law contains an obligation to investigate grave breaches of the Geneva Conventions. This obligation flows generally from their common article 1, but more specifically from their foregoing provisions. Article 146 (2) of the Fourth Geneva Convention provides that each High Contracting Party shall be under the obligation "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts…".

1806. There is a parallel obligation to investigate under international human rights law. Article 2 of ICCPR requires a State party to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in it and also to ensure an effective remedy for any person whose rights have been violated. Failure to ensure the rights as required by article 2 would give rise to an independent violation,

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[1149] "The operation in Gaza…", para. 300.

[1150] Ibid.

[1151] *Customary International Humanitarian Law*..., rule 158, p. 607; E/CN/4/2006/53, paras. 33-43.

> … as a result of States parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.
>
> […]
>
> A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant...[1152]

1807. In several decisions on individual communications concerning offences against the right to life and physical integrity, the Human Rights Committee has held that the failure to investigate and punish the perpetrators constitutes a violation of the Covenant. For instance, in Bautist*a de Arellana* v. *Colombia*, the Committee held:

> … that the State party is under a duty to investigate thoroughly alleged violations of human rights, and in particular forced disappearances of persons and violations of the right to life, and to prosecute criminally, try and punish those held responsible for such violations. This duty applies a fortiori in cases in which the perpetrators of such violations have been identified.[1153]

1808. This obligation to investigate under human rights law applies equally to actions that take place during armed conflict. In *Isayeva* v. *Russia*, a case concerning a woman whose relatives were killed by indiscriminate shelling in Chechnya by Russian forces, the European Court of Human Rights held that the requirements of article 2 of the European Convention applied. This provision, read with article 1 ("to secure to everyone… the rights and freedoms defined in [the] Convention") would require "by implication that there should be some form of effective judicial investigation when individuals have been killed as a result of the use of force".[1154]

1809. The Court laid down a series of principles which such an investigation should observe: inter alia, that authorities must act on their own motion, act with independence, be effective and prompt.

1810. The Inter-American Court of Human Rights has established similar jurisprudence.[1155]

1811. The Mission holds the view that the duty to investigate allegations of serious violations of the right to life and physical integrity under ICCPR extends equally to allegations about acts committed in the context of armed conflict.

[1152] Human Rights Committee, general comment 31 (2004), paras. 8 and 15.

[1153] *Bautista de Arellana* v. *Colombia*, communication No. 563/1993, views of 27 October 1995, para 8.6; See also, *José Vicente and Amado Villafañe Chaparro, Luis Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres* v. *Colombia*, communication No. 612/1995, views of 29 July 1995, para 8.8; *Rajapakse* v. *Sri Lanka*, communication No. 1250/2004, views of 14 July 2006, para. 9.3.

[1154] Case *Isayeva* v. *Russia*, application no. 57950/00, Judgement of 24 February 2005, para. 209.

[1155] See *Case of the Ituango Massacres* v. *Colombia*, *Case of the Mapiripán Massacre* v. *Colombia*.

1812. The State's duty to investigate is also firmly established in the jurisprudence of the Supreme Court of Israel. Thus, in the *Targeted killings* case, which addresses the use of armed force in a context regarded as armed conflict, it held:

> … after an attack on a civilian suspected of taking an active part, at such time, in hostilities, a thorough investigation regarding the precision of the identification of the target and the circumstances of the attack upon him is to be performed (retroactively). That investigation must be independent[1156]

1813. The Mission notes that Israel does not question its duty to investigate allegations of serious offences by its armed forces. On the contrary, it has repeatedly stated that the investigation system that it has put in place is effective.[1157]

1814. It remains to be considered whether, in carrying out its duty to investigate allegations of serious violations, Israel has observed the universal principles of independence, effectiveness, promptness and impartially. These principles have been developed in the jurisprudence of international courts of human rights and are agreed upon by the States represented within the relevant United Nations bodies.[1158]

1815. The Mission finds that the system put in place by Israel, and described above, to deal with allegations of serious wrongdoing by armed forces personnel does not comply with all those principles.

1816. The system is not effective in addressing the violations and uncovering the truth. In this respect the Mission recalls the statements of Col. (res.) Ilan Katz, until March 2003 the Deputy Military Advocate General, criticizing the use of operational debriefings by commanders in order to prevent criminal investigations. In a meeting of the Israel Bar Association's Military and Security Committee, Col. (res.) Katz was reported to have stated:

> From the beginning of the uprising and as of August 2004, about 90 [Military Police Criminal Investigation Division] investigations were opened into the injuries and deaths of Palestinians. About 70 investigations were opened in the last year alone. That shows that they saw that the Operational Debriefing did not lead to uncovering the truth and then the [Military Advocate General] gave an order to begin [Military Police Criminal Investigation Division] investigations. I used to be part of the policy that allowed the Army to use the military debriefing, but the Army did not use the Operational Debriefing appropriately because of a failure to comply with regulations and orders. That tool did not prove itself.

[1156] *Public Committee against Torture in Israel et al.* v. *Government of Israel et al.*, case No. 769/02, 13 December 2006, para. 40.

[1157] "The operation in Gaza…", paras 283 ff.

[1158] *Principles on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions* (Economic and Social Council resolution 1989/65, annex), and *the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (General Assembly resolution 55/89, annex).

1817. Col. (res.) Katz appears to admit that the system does not comply with the requirement of promptness. Even if a decision is made by the Military Advocate General to order the opening of criminal investigations, investigation is usually nearly impossible at that point:

> The reason is that when the commanders conduct an operational debriefing they destroy the scene of the crime, and months later it is difficult to find traces of evidence on the ground. You cannot even check the gun from which the shots were fired because by the time the [Military Police Criminal Investigation Division] investigation begins many more shots have been fired by the same gun, or in some cases the gun changes hands and it is very hard to trace it. The debriefing law has a certain logic because it raises the level of credibility of the operational debriefings, but the way it is exploited by commanders in order to prevent [Military Police Criminal Investigation Division] investigations is not reasonable.[1159]

1818. The Mission notes that the report in which the above statements appear has not been contradicted by the Government of Israel. The statements are also consistent with other assessments. Human Rights Watch studied the cases that were investigated between 2000 and 2004, and concluded that very few had actually gone to full criminal investigations and that even fewer had ended in indictments. When convictions did follow, the penalties were noticeably more lenient than those imposed on Palestinian offenders. The organization Yesh Din came to similar conclusions in its study of cases from 2000 to the end of 2007.[1160]

1819. Operational debriefing, to review operational performance, is not an appropriate tool to conduct investigations of allegations of serious violations of human rights and humanitarian law. It appears to the Mission that established methods of criminal investigations such as visits to the crime scene, interviews with witnesses and victims, and assessment by reference to established legal standards have not been adopted. The operational debriefings as well as the five "expert " investigations carried out by the Israeli armed forces into events during the December–January military operations in Gaza appear to have relied exclusively on interviews with Israeli officers and soldiers. As such, these investigations did not comply with required legal standards.

1820. The Israeli armed forces stated that it had conducted more than 100 "military investigations" into allegations of wrongdoing during the military operations in Gaza. Some 13 criminal investigations have been opened. On the basis of the facts available to it and on the circumstances, the Mission finds that a delay of six months to start these criminal investigations constitutes undue delay in the face of the serious allegations that have been made by many people and organizations.

1821. Amnesty International has said about the public outcomes of Israeli armed forces' investigations into events during the military operations:

[1159] *Maariv*, "The MPCID does not know how to do its job", 1 January 2005, cited in Yesh Din: Volunteers for Human Rights, *Exceptions: Prosecution of IDF Soldiers during and after the Second Intifada, 2000–2007* (September 2008), p. 23.

[1160] *Promoting Impunity*…, pp. 100 ff.; *Exceptions: Prosecution*…, pp. 33 ff.; see also B'Tselem, "Military police investigations during the al-Aqsa intifada", available at: http://www.btselem.org/English/Accountability/Investigatin_of_Complaints.asp.

> The information made public only refers to a handful of cases and lacks crucial details. It mostly repeats claims made by the army and the authorities many times since the early days of Operation "Cast Lead", but does not provide evidence to back up the allegations. It does not even attempt to explain the overwhelming majority of civilian deaths nor the massive destruction caused to civilian buildings in Gaza.[1161]

1822. In this regard, the Mission recalls the recommendations made to Israel by the Committee against Torture to "conduct an independent inquiry to ensure a prompt, independent and full investigation" into the responsibility of the State and non-State actors during the war. This recommendation was issued after Israel released the results of five "special investigations" in April 2009.[1162]

1823. On the basis of the information before it and the above considerations the Mission finds that the failure of Israel to open prompt, independent and impartial criminal investigations even after six months have elapsed constitute a violation of its obligation to genuinely investigate allegations of war crimes and other crimes, and other serious violations of international law.

1824. The obligation on Israel to prevent, investigate and punish violations of human rights applies also to its actions or omissions in the West Bank. Such obligation includes the duty to take appropriate measures or to exercise due diligence to prevent, investigate or redress harm caused by private persons.[1163] As stated above, the Mission has not received any information indicating the initiation of criminal or other investigations into violence against Palestinians in the West Bank, including East Jerusalem, related to the military operations in the Gaza Strip. Israel appears to do little to protect Palestinians from settler violence and, if investigations into such violence are opened, they are reported to be prolonged and usually result in no action. Yesh Din reports that over 90 per cent of investigations into settler violence are closed without an indictment being filed.

1825. If settlers are convicted, the sentences are reported to be very light.[1164] This practice should be contrasted with the harsh treatment and punishment meted out to Palestinians who harm Israelis. This has been described as a discriminatory policy.[1165] Similarly, action against members of security forces who commit acts of violence, including killings, serious injuries and other abuses, against Palestinians is very rare. Information available to the Mission points to a systematic lack of accountability of members of the security forces for such acts.[1166]

1826. The Government of Israel also reports that, in October 2007, the Office of the Military Advocate for Operational Affairs was established to investigate cases of operational misconduct by Israeli armed forces soldiers against Palestinian civilians. This special military prosecution unit allows the automatic opening of criminal investigations in all cases. As a result, the Government reports, the numbers of criminal investigations launched in 2007 and 2008 in relation to abuse against Palestinians have more than doubled, from 152 in 2006 to 351 in 2007 and 323 in 2008.[1167] However, no figures are provided about how many of those investigations resulted in indictments and in convictions, and the offence for which the concerned persons were finally convicted.

[1161] *Israel/Gaza: Operation "Cast Lead": 22 days...*, p. 93.

[1162] CAT/C/ISR/CO/4, para. 29.

[1163] Human Rights Committee, general comment No. 31 (2004), para. 8.

[1164] Yesh Din, "Law enforcement upon Israeli civilians in the OPT: Yesh Din's monitoring", data sheet, July 2008.

[1165] B'Tselem, "Handling of complaints of settler violence", available at: http://www.btselem.org/english/Settler_Violence/Law_Enforcement.asp

[1166] See chap. XXI.

1827. The same paper by the Government of Israel states that, in military courts as a whole, from January 2002 to December 2008 inclusive, there have been 1,467 criminal investigations, leading to 140 indictments. As of December 2008, 103 defendants had been convicted and 10 cases were still pending. During the first six months of 2009, 123 criminal investigations were opened, leading to 10 indictments so far.[1168] This information is contradicted, in addition to being incomplete.

1828. Yesh Din points out that the limited number of indictments leads, in practice, to even fewer convictions. Most of those convictions are for offences that do not reflect the degree of gravity of the action. For instance, from September 2000 to the end of 2007, only 135 soldiers were indicted, of whom some 113 had been convicted by mid-2008. Only 22 underwent full criminal trials in courts martial and 95 were convicted on the basis of their confessions. But as many as 73 confessed to amended indictments and were therefore convicted of less serious offences than the original charges. This situation has been attributed partially to the system of plea-bargaining officially used in Israel and to the willingness of the Military Prosecutor to agree to lesser offences and penalties having due regard, inter alia, to the difficulties encountered in gathering sufficient evidence to back up the original charge.[1169]

1829. Another contributing factor is the unprofessional way in which criminal investigations are carried out, making it virtually impossible to prove the charges beyond reasonable doubt. Courts martial have criticized those investigations on several occasions. Military criminal investigators do not seem interested in interviewing victims or witnesses and the quality of evidence gathered is low.[1170]

1830. The change of policy instituted in 2000 determining that full criminal investigations are possible only after "operational debriefings" have been carried out means that in practice criminal investigations do not begin before six months after the events in question. By that time evidence may be corrupted or no longer available.

1831. The Mission holds the view that a tool designed for the review of performance and to learn lessons can hardly be an effective and impartial investigation mechanism that should be instituted after every military operation where allegations of serious violations have been made. It does not comply with internationally recognized principles of independence, impartiality, effectiveness and promptness in investigations. The fact that proper criminal investigations can start only after the "operational debriefing" is over is a major flaw in the Israeli system of investigation.

[1167] "The operation in Gaza…", paras. 294-295.

[1168] Ibid., para. 293.

[1169] *Exceptions: Prosecution…*, pp. 33-35.

[1170] Ibid., pp. 27-28.

1832. The Mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission is also of the view that the Israeli system presents inherently discriminatory features that have proven to make the pursuit of justice for Palestinian victims very difficult.

1833. In this context, the Mission notes that on 21 January 2009 the Office of the Prosecutor of the International Criminal Court received a declaration in the following terms:

> 'Pursuant to the provisions of article 12, paragraph 3, of the Statute of the International Criminal Court, the Government of Palestine hereby recognizes the jurisdiction of the Court for the purposes of identifying, prosecuting and judging the authors and accomplices of acts committed in the territory of Palestine since 1 July 2002.'

1834. Article 12 of the Rome Statute - Preconditions to the exercise of jurisdiction - reads as follows:

> 1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
>
> 2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
>
> (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
>
> (b) The State of which the person accused of the crime is a national.
>
> 3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

1835. The Prosecutor may determine that for the purposes of article 12, paragraph 3, under customary international law, Palestine qualifies as "a State".

XXVII. PROCEEDINGS BY PALESTINIAN AUTHORITIES

A. Proceedings related to actions in the Gaza Strip

1836. The Gaza authorities are responsible for ensuring that effective measures for accountability for violations of IHRL and IHL committed by armed groups acting in or from the

Gaza Strip are established. The Mission points out that such responsibility would continue to rest on any authority exercising government-like functions in the Gaza Strip.

1837. ICHR reports that actions in the Gaza Strip in respect of accountability are limited to the formation of committees to monitor and report on a number of human rights violations.[1171]

1838. However, there is no evidence of any system of public monitoring or accountability for serious IHL and IHRL violations. The Mission has heard credible reports of such violations that are discussed in other parts of this report. In particular, the Mission is concerned about the consistent disregard of IHL with which all armed groups in the Gaza Strip conduct their armed activities directed against Israel.

1839. The Mission notes that:

(a) On 10 July 2008, it was reported by BBC that "Hamas security forces" had arrested two members of al-Aqsa Martyrs' Brigades who had launched rocket attacks on Israel the day before.[1172] According to the same report, al-Aqsa Martyrs' Brigades said members of Hamas' security forces had chased and "abducted" two of their members. Reuters, later on 10 July 2008, reported that an additional four members of al-Aqsa Martyrs' Brigades were arrested by Hamas as they tried to fire rockets into Israel;[1173]

(b) On 9 March 2009, Islamic Jihad stated that the Internal Security had arrested 10 of its members and forced them to sign statements prior to their being released pledging that they would cease rocket fire on Israel;[1174]

(c) On 13 March 2009, an official of the Gaza authorities was reported as saying that security forces would track and arrest anyone suspected of firing rockets into Israel, stating "the rockets have been fired at the wrong time";[1175]

[1171] ICHR, *Fourteenth Annual Report*, pp. 179 ff. In relation to internal violence, Al-Mezan pointed out that "previous commissions of inquiry that were established to investigate these violations failed to make public their findings, which has contributed to the reoccurrence of violations" ("Al-Mezan welcomes decision of Prime Minister in Gaza to approve Commission of Inquiry recommendation to dismiss and bring to justice perpetrators of law and human rights violations", 1 April 2009). Similarly, PCHR lamented "the failure of the Palestinian authorities to take any action to prosecute the perpetrators or to make available the results of any investigations. This contributes to the proliferation of such crimes" ("PCHR demands investigation into death of a civilian tortured by members of the Intelligence Services in Gaza", press release, 25 March 2009).

[1172] BBC News, "Gaza militants fire two rockets", 10 July 2008, available at: http://news.bbc.co.uk/2/hi/middle_east/7500322.stm.

[1173] Reuters, "Hamas arrests militants after rocket fire", 10 July 2008, available at: http://www.reuters.com/article/latestCrisis/idUSL103182282.

[1174] Ynet News, "Islamic Jihad: Hamas arrested 10 of our men", 9 March 2009, available at: http://www.ynetnews.com/articles/0,7340,L-3683385,00.html; see also BBC News, "Hamas threatens rocket militants", 12 March 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/7940371.stm.

[1175] *World Tribune*, "Hamas cracks down on the unauthorized, random firing of rockets at Israel", 13 March 2009.

(d) On 11 July 2009, the Islamic Jihad released a statement in which asserted that two of its members had been arrested by "interior security officials" as they had been preparing to fire mortars into Israel.[1176]

1840. As far as incidents of killing, torture and mistreatment within the Gaza Strip in connection with or in the context of the military operations are concerned,[1177] the Gaza authorities stated that they had investigated allegations of abuse and found that the incidents were "family revenge cases" or individual acts motivated by revenge. Through its competent agencies, the authorities stated that they "had opened investigations into these events immediately after the war" and submitted charges before the competent courts.[1178] Notwithstanding this statement and any action that the Gaza authorities may have taken, of which the Mission is unaware, the Mission considers that allegations in this respect have gone largely without investigation.

1841 The Mission has taken into account the media reports referred to above, but remains unconvinced that any genuine and effective initiatives have been taken by the authorities to address the serious issues of violation of IHL in the conduct of armed activities by militant groups in the Gaza Strip. The Mission was also given no evidence of any arrests, investigation or prosecution connected with the serious violations of the peremptory norms of international law that have been alleged in information presented in other parts of this report, be these against Palestinian civilians in Gaza or against Israeli civilians.

1842. The Mission is aware that Hamas continues to view all armed activities directed against Israel as resistance to occupation and practices of the occupation, and, therefore, a legitimate right of the Palestinian people. The Mission fully recognizes the Palestinian people's right to self-determination, in accordance with the Charter of the United Nations and international human rights conventions. It also acknowledges that United Nations bodies and others have repeatedly pointed out practices of the Israeli occupation that deprive Palestinians of their human rights and fundamental freedoms Nevertheless, the Mission forcefully reiterates that the peremptory norms of customary international law, both of human rights law and humanitarian law, apply to all actions that may be undertaken in response to, or to oppose, human rights violations.

B. Proceedings related to actions in the West Bank

1843. The Palestinian Authority has a duty to respect and ensure respect for human rights and humanitarian law in the areas under its authority and control. The duty to investigate and, if appropriate, prosecute alleged perpetrators of serious crimes is also incumbent upon it. It has a general duty to provide an effective remedy to those who allege that their rights have been infringed.

1844. Article 32 of the Palestinian Basic Law provides:

[1176] *Haaretz*, "Hamas nabs two Islamic Jihad preparing to fire mortars at Israel", 11 July 2009.

[1177] See chap. XX.

[1178] Written reply to list of questions formulated by the Mission, July 2009, on file with the Mission secretariat.

> Any violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by the law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage.

1845. In its 2008 report, ICHR addresses the system of accountability in the Occupied Palestinian Territory, including the West Bank and the Gaza Strip. Victims of violations may submit a petition to the Attorney General, who should start investigations according to the law. Compensation can also be requested and obtained from the Palestinian Authority through a civil suit. The 1960 Jordanian Penal Code still applies in the West Bank. There is also provision for the enforceability of judicial rulings and sentences (article 106 of the Basic Law).

1846. The Basic Law grants the Palestinian Legislative Council the power to set up fact-finding committees to inquire into any matter of public concern (art. 58), including human rights and freedoms. ICHR observes that, of the few committees established to address human rights issues, none has found its recommendations or findings translated into criminal prosecutions.[1179] With few exceptions, it appears that there has been a degree of tolerance towards human rights violations against political opponents, which has resulted in a lack of accountability for such actions.[1180]

1847. The Ministry of Interior has also ignored the High Court's decisions to release a number of detainees or to reopen some associations closed by the administration. The police put in place an internal disciplinary mechanism under which a total of 430 police were sanctioned during 2008. But the Preventive Security agencies and the General Intelligence agencies have not taken any similar measures.[1181]

1848. The Mission requested information from the Palestinian Authority about any investigation it had initiated into allegations of violations by members of Palestinian security forces in areas under its jurisdiction. In its reply to the list of questions formulated by the Mission, the Palestinian Authority did not provide any information in this respect. In the circumstances, the Mission is unable to consider the measures taken by the Palestinian Authority as meaningful for holding to account perpetrators of serious violations of international law and believes that the responsibility for protecting the rights of the people inherent in the authority assumed by the Palestinian Authority must be fulfilled with greater commitment.

XXVIII. UNIVERSAL JURISDICTION

1849. In their search for justice, victims of serious violations of human rights have often looked for accountability mechanisms in other countries when there were none at home or the existing ones did not offer an effective remedy. The principle of universality, which says that international crimes that violate fundamental human values are a concern for the entire international community, underpins the exercise of criminal jurisdiction in many States. The exercise of criminal jurisdiction on the basis of the universality principle concerns especially serious crimes regardless of the place of commission, the nationality of the perpetrator or the nationality of the victim. This form of jurisdiction is concurrent with others based on more traditional principles of territoriality, active and passive nationality, and it is not subsidiary to them.

[1179] ICHR, *Fourteenth Annual Report*, p. 182.

[1180] See chap. XXIII.

[1181] ICHR, *Fourteenth Annual Report*, p. 185.

1850. It is uncontroversial today that States may confer upon their courts the right to exercise universal jurisdiction over international crimes, including war crimes, crimes against humanity and genocide.[1182] However, there is lingering controversy about the conditions or requirements for the exercise of that jurisdiction and, in particular, about whether the alleged perpetrator should be physically in the territory of the prosecuting State or not.

1851. Universal jurisdiction is also established under certain conventions as an obligation for their States parties. Such is the case of the Fourth Geneva Convention, whose article 146 requires each high contracting party "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches" and to bring such persons, regardless of their nationality, before its own courts.

1852. Article 5 of the Convention against Torture requires States parties to take measures to establish jurisdiction over the offence of torture and of complicity or participation in torture when the alleged offender is in a territory under its jurisdiction.

1853. Many countries around the world incorporate the principle of universal jurisdiction into their national legislation, including Australia, Bangladesh, Belgium, Costa Rica and Spain.

1854. In connection with past events in the Occupied Palestinian Territory, the Mission is aware of one case pending before the Spanish courts. It concerns the killing of Hamas leader Salah Shehadeh on 22 July 2002 by a one-ton bomb fired from an Israeli F-16 aircraft. The strike also killed a number of other people in the same house and in the house next door. The investigating judge admitted the case for investigation on the basis of the universality principle and after determining that the Israeli internal investigation system did not satisfy the requirements of the right to an effective remedy. This decision was overturned by the Appeals Chamber, whose decision is, in turn, being appealed now to the Supreme Court.[1183]

1855. There are other cases pending before national courts of several European States, such as the Netherlands[1184] and Norway.[1185] In South Africa, a request for prosecution is being considered by the National Prosecuting Authority.[1186]

[1182] See *Customary International Humanitarian Law*..., rule 157, p. 604.

[1183] Auto, 4 May 2009, Juzgado Central de Instrucción No. 4, Audiencia Nacional; Auto No. 1/09, 9 July 2009, Sala de lo Penal Pleno, Audiencia Nacional.

[1184] PCHR, "Torture victim seeks prosecution of former head of Israeli general security services", press release, 6 October 2008, available at http://www.pchrgaza.org/files/PressR/English/2008/92-2008.html. This case is brought under articles 6 and 7 of the Convention against Torture.

1856. Criminal investigations and prosecutions by countries other than Israel are possible on the basis of the principle of nationality of the offender. Several countries provide their courts with jurisdiction over their own nationals regardless of the place where the offence has been committed. For instance, article 5 of the Convention against Torture requires States parties to establish jurisdiction over offences defined in it when the offender is a national.

1857. It is the view of the Mission that universal jurisdiction is a potentially efficient tool for enforcing international humanitarian law and international human rights law, preventing impunity and promoting international accountability. In the context of increasing unwillingness on the part of Israel to open criminal investigations that comply with international standards and establish judicial accountability over its military actions in the Occupied Palestinian Territory, and until such a time as clarity is achieved as to whether the International Criminal Court will exercise jurisdiction over alleged crimes committed in the Occupied Palestinian Territory, including in Gaza, the Mission supports the reliance on universal jurisdiction as an avenue for States to investigate violations of grave breach provisions of the Geneva Convention of 1949, prevent impunity and promote international accountability.

XXIX. REPARATION

1858. The extent of the damage and destruction inflicted on Palestinian lives and property, and on Palestinian civilian objects has been substantial. The Palestinian Authority estimated the total cost of early recovery and reconstruction at US$ 1,326 million in March 2009.[1187] To this amount should be added the indirect costs of the impact on human and animal health, the environment and market opportunities. These losses are still to be estimated.

1859. The international community, bilateral donors and multilateral agencies (including the United Nations specialized agencies, programmes and funds) have been responsive to the urgent needs of the Palestinian people in the Gaza Strip. A number of development NGOs operating in the Gaza Strip have redoubled their efforts. The Gaza Flash Appeal 2009,[1188] prepared by aid agencies operating in the Gaza Strip, called for US$ 613 million to meet the requirements of urgent life-saving projects and initial crucial repairs to infrastructure over a period of nine months. By the middle of 2009 only a fraction of those requirements had been met. The United Nations Resident/Humanitarian Coordinator in the Occupied Palestinian Territory has said that although donor countries had pledged billions of dollars for Gaza's reconstruction, it cannot begin because of the ongoing Israeli blockade.[1189] In addition, some international donors are

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[1185] Spiegel Online International, "War crimes in Gaza? Palestinian lawyers take on Israel", 6 May 2009, available at: http://www.spiegel.de/international/world/0,1518,628773,00.html. Lawyers in Norway are seeking an arrest warrant against several senior Israeli officials.

[1186] The request, against more than 70 persons, was submitted by civil society organizations under a South African law which gives effect to the Rome Statute and makes the prosecution of war crimes and crimes against humanity a legal obligation.

[1187] *Palestinian National Early Recovery and Reconstruction Plan*..., p. 11.

[1188] Occupied Palestinian Territory: Gaza Flash Appeal, Consolidated Appeal Process, 2009.

[1189] United Nations News Centre, "Unresolved Gaza crisis hampering efforts to advance Mid-East peace – UN envoy", 23 June 2009.

reluctant to disburse funds in the current climate of uncertainty created by the rift between the two rival Palestinian political groups in Gaza and the West Bank.[1190]

1860. Notwithstanding the response by the Palestinian Authority and the international community to the crisis resulting from the combined effect of the blockade and the military operations of December 2008–January 2009, the Mission is more concerned about the individuals (women, men, children and the elderly) and their families, and their ability to rebuild their lives after this traumatic experience. The Mission is conscious that rebuilding Palestinian lives and livelihoods will not be fully possible until the effects of the occupation, the blockade and successive military incursions are eliminated. One should not lose sight, however, of the individual human dimension. That dimension flows from the right to a remedy and reparation that the Palestinian people and individual Palestinians have under international law. Palestinian lives, physical integrity and health have been affected, in many cases very seriously and irreparably. In addition to the loss of life and limb, considerable mental harm has been inflicted on many people who have lost relatives and often financial support. The psychological harm caused to the Palestinians in Gaza is still to be assessed and also requires reparation measures; so, too, the destruction of houses and private property.

A. The right to a remedy and reparation under international

1861. The obligation to make full reparation for the loss or injury caused is an international obligation incumbent upon a State responsible for an unlawful act. International law also recognizes victims' rights to an effective remedy and reparations for damage or loss resulting from violations of their human rights. This obligation and these rights are recognized in international treaties and customary international law.

1862. As early as 1927, the Permanent Court of International Justice established the provision of reparation for the injury caused by an international wrongful act as a principle of international law: "Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself".[1191]

1863. This principle was codified by the International Law Commission in article 31 of its draft articles on responsibility of States for internationally wrongful acts.[1192]

1864. The principle that a State responsible for breaching an international obligation should repair the damage or loss caused can also be found in international humanitarian law conventions and human rights treaties. These include article 3 of the 1907 Fourth Hague Convention, article 51 of the First Geneva Convention, article 52 of the Second Geneva Convention, article 131 of the Third Geneva Convention and article 148 of the Fourth Geneva Convention. A similar rule is provided for in article 91 of Additional Protocol I to the Geneva Conventions.

[1190] *The New York Times*, "Makeshift repairs not enough for battered Gaza", 17 August 2009.

[1191] Chorzów Factory case, 1927, P.C.I.J. (Ser. A) No. 9, p. 21.

[1192] General Assembly resolution 56/83, annex; see also *Customary International Humanitarian Law*..., rule 150, p. 537.

1865. Reparation as part of the right to a remedy has been enshrined in article 2 (3) of ICCPR, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and article 39 of the Convention on the Rights of the Child. The Rome Statute also provides for the right of victims to participation in the proceedings (art. 68 (3)) and to reparations (art. 75).[1193]

1866. Reparation can take the form of restitution, compensation or satisfaction, but may also include measures of rehabilitation of victims and guarantees of non-repetition.[1194]

B. Compensation and reparations to the Palestinian people in the Gaza Strip

1867. According to news reports, UNDP and the Palestinian Authority signed an agreement allocating US$ 270 million for the restoration of the agricultural sector in Gaza. This will allow for the payment of a compensation package to Palestinian farmers for property damaged during the most recent military operations in Gaza, repair of the damaged infrastructure, damaged orchards, fisheries, livestock, greenhouses, irrigation networks and roads.[1195] Cash assistance was also to be provided to some 10,000 non-refugee Palestinians whose houses have been destroyed or damaged.[1196] While in Gaza City, the Mission learnt that such compensation schemes were being implemented.

1868. These assistance and compensation schemes notwithstanding, the Mission is of the view that international law requires the State responsible for the internationally wrongful act to provide reparation and compensation to the victim. To the Mission's knowledge, Israel has to date considered compensation to be paid only to the United Nations for the damage inflicted on United Nations personnel and facilities, without acknowledging responsibility.[1197] At the very least, similar compensation should be offered to Palestinian individuals.

1869. In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice affirmed that "Israel has the obligation to make reparation for the damage caused to all natural and legal persons concerned."[1198] The United Nations has established the United Nations Registry of Damages, which collects data on damage caused to Palestinians by the construction of the Wall.[1199] Domestic law of Israel would be one vehicle to make possible reparations for affected Palestinians.

[1193] See also principle 11 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147):

> Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:
>
> (*a*) Equal and effective access to justice;
>
> (*b*) Adequate, effective and prompt reparation for harm suffered;
>
> (*c*) Access to relevant information concerning violations and reparation mechanisms.

[1194] See article 34 of the draft articles on responsibility of States for internationally wrongful acts. Rehabilitation and guarantees of non-repetition are listed as forms of reparation in the above-mentioned Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

[1195] UNDP, "Farmers to receive compensation for damaged property in Gaza", news release, 26 February 2009.

[1196] UNDP, "10,000 families in Gaza to receive cash assistance for damaged homes", news release, 10 February 2009.

[1197] Agence France-Presse, "Israel offering compensation for UN Gaza damage: official", 3 July 2009.

1870. The possibilities for obtaining reparation and compensation in the Israeli legal system have been limited. A 2001 amendment to the Civil Wrongs Act extended the definition of "acts of war" and set procedural limitations on Palestinians' ability to bring claims against Israel. These limitations include the shortening of the period before the statute of limitations applies and the requirement to submit a "notice" of damage to the Israeli Defense Minister in advance of the claim and within two months after the damage occurred.[1200] Additional amendments passed in 2002 and 2005 prevent the courts from hearing claims relating to actions by security forces in "conflict zones" proclaimed as such by the Minister of Defense, and give immunity to the State against claims by subjects of enemy States or members of "terrorist organizations".[1201] Under the last two amendments the character of the harmful act, the circumstances under which harm was suffered and the causality link between the perpetrator and the harm have become irrelevant. The Mission received information that the amendments allowed the Minister of Defense to declare areas in the Occupied Palestinian Territory as "conflict zones" retroactively.

1871. The 2005 amendment No. 7 was challenged before the Supreme Court of Israel, which ruled in 2006 that section 5C of the Civil Wrongs Law (as amended in 2005) was not constitutional. Therefore, the provision that makes Israel immune from civil liability for acts of security forces in declared "zones of conflict" was struck down. However, the ruling did not pronounce on the constitutionality of section 5B of the Law, which grants immunity to the State against civil claims brought by subjects of a State enemy of Israel and persons active in or members of a terrorist organization.[1202] At the same time, other amendments passed prior to 2005 have not been challenged and stand as law in force in the land.

1872. The Mission is concerned that the possibilities for civil compensation for damage and loss of property suffered by Palestinians during military operations are limited in Israeli domestic law since that damage is generally seen as the result of "acts of war" regardless of the nature of the action. In a recent decision concerning a claim on behalf of a Palestinian killed by helicopter fire on 16 April 2002 during the so-called Operation Defensive Shield, in Nablus, the Court ruled that this was an "act of war" designed to "vanquish the terrorist infrastructure". The Jerusalem Magistrate's Court held that an air strike is clearly an act of war "that the legislator intended to make immune to prosecution" even when the plaintiffs showed that the victim was a civilian standing on the roof of his house.[1203]

[1198] *Legal Consequences ...*, para. 152.

[1199] Its mandate is limited to the registration of the damage or loss suffered as a result of the construction of the Wall in the Occupied Palestinian Territory.

[1200] Civil Wrongs (Liability of the State) (Amendment – Claims Arising from Activity of Security Forces in Judea and Samaria and the Gaza Strip) Law, 2001, sections 2 and 3, available at: www.hamoked.org.il.

[1201] Civil Wrongs (Liability of the State) (Amendment No. 5) (Filing of Claims against the State by a Subject of an Enemy State or Resident of a Zone of Conflict) Law, 2002, and Civil Wrongs (Liability of the State) (Amendment No. 7) Law, 2005, sections 5B and 5C.

[1202] *Adalah et al.* v. *Minister of Defense et al.*, case No. 8276/05, Judgement of 12 December 2006.

1873. It is the view of the Mission that the current constitutional structure and legislation in Israel leaves very little room, if any, for Palestinians to seek compensation. The international community needs to provide an additional or alternative mechanism of compensation by Israel for damage or loss incurred by Palestinian civilians during the military operations. In this regard, the Mission notes that the International Commission of Inquiry on Darfur and the Commission of Inquiry on Lebanon expressed similar concerns about the need for compensation for the victims.[1204]

[1203] *Odah et al.* v. *The State of Israel*, case No. C/007798/04, Judgement of June 2009 not yet reported.

[1204] "Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-general, pursuant to Security Council resolution 1564 of 18 September 2004", para. 601; "Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1" (A/HRC/3/2, para. 349).

PART FIVE: CONCLUSIONS AND RECOMMENDATIONS

XXX. CONCLUSIONS

A. Concluding observations

1874. **An objective assessment of the events it investigated and their causes and context is crucial for the success of any effort to achieve justice for victims of violations and peace and security in the region, and as such is in the interest of all concerned and affected by this situation, including the parties to the continuing hostilities. It is in this spirit, and with full appreciation of the complexity of its task, that the Mission received and implemented its mandate.**

1875. **The international community as well as Israel and, to the extent determined by their authority and means, Palestinian authorities, have the responsibility to protect victims of violations and ensure that they do not continue to suffer the scourge of war or the oppression and humiliations of occupation or indiscriminate rocket attacks. People of Palestine have the right to freely determine their own political and economic system, including the right to resist forcible deprivation of their right to self-determination and the right to live, in peace and freedom, in their own State. The people of Israel have the right to live in peace and security. Both peoples are entitled to justice in accordance with international law.**

1876. **In carrying out its mandate, the Mission had regard, as its only guides, for general international law, international human rights and humanitarian law, and the obligations they place on States, the obligations they place on non-State actors and, above all, the rights and entitlements they bestow on individuals. This in no way implies equating the position of Israel as the occupying Power with that of the occupied Palestinian population or entities representing it. The differences with regard to the power and capacity to inflict harm or to protect, including by securing justice when violations occur, are obvious and a comparison is neither possible nor necessary. What requires equal attention and effort, however, is the protection of all victims in accordance with international law.**

B. The Israeli military operations in Gaza: relevance to and links with Israel's policies vis-à-vis the Occupied Palestinian Territory

1877. **The Mission is of the view that Israel's military operation in Gaza between 27 December 2008 and 18 January 2009 and its impact cannot be understood or assessed in isolation from developments prior and subsequent to it. The operation fits into a continuum of policies aimed at pursuing Israel's political objectives with regard to Gaza and the Occupied Palestinian Territory as a whole. Many such policies are based on or result in violations of international human rights and humanitarian law. Military objectives as stated by the Government of Israel do not explain the facts ascertained by the Mission, nor are they congruous with the patterns identified by the Mission during the investigation.**

1878. **The continuum is evident most immediately with the policy of blockade that preceded the operations and that in the Mission's view amounts to collective punishment**

intentionally inflicted by the Government of Israel on the people of the Gaza Strip. When the operations began, the Gaza Strip had been under a severe regime of closures and restrictions on the movement of people, goods and services for almost three years. This included basic necessities of life, such as food and medical supplies, and products required for the conduct of daily life, such as fuel, electricity, school items, and repair and construction material. These measures were imposed by Israel purportedly to isolate and weaken Hamas after its electoral victory in view of the perceived continuing threat to Israel's security that it represented. Their effect was compounded by the withholding of financial and other assistance by some donors on similar grounds. Adding hardship to the already difficult situation in the Gaza Strip, the effects of the prolonged blockade did not spare any aspect of the life of Gazans. Prior to the military operation, the Gaza economy had been depleted, the health sector beleaguered, the population had been made dependent on humanitarian assistance for survival and the conduct of daily life. Men, women and children were psychologically suffering from long-standing poverty, insecurity and violence, and enforced confinement in a heavily overcrowded territory. The dignity of the people of Gaza had been severely eroded. This was the situation in the Gaza Strip when the Israeli armed forces launched their offensive in December 2008. The military operations and the manner in which they were conducted considerably exacerbated the aforementioned effects of the blockade. The result, in a very short time, was unprecedented long-term damage both to the people and to their development and recovery prospects.

1879. **An analysis of the modalities and impact of the December-January military operations also sets them, in the Mission's view, in a continuum with a number of other pre-existing Israeli policies with regard to the Occupied Palestinian Territory. The progressive isolation and separation of the Gaza Strip from the West Bank, a policy that began much earlier and which was consolidated in particular with the imposition of tight closures, restrictions on movement and eventually the blockade, are among the most apparent. Several measures adopted by Israel in the West Bank during and following the military operations in Gaza also further deepen Israel's control over the West Bank, including East Jerusalem, and point to a convergence of objectives with the Gaza military operations. Such measures include increased land expropriation, house demolitions, demolition orders and permits to build homes in settlements, greater and more formalized access and movement restrictions on Palestinians, new and stricter procedures for residents of the Gaza Strip to change their residency to the West Bank. Systematic efforts to hinder and control Palestinian self-determined democratic processes, not least through the detention of elected political representatives and members of Government and the punishment of the Gaza population for its perceived support for Hamas, culminated in the attacks on government buildings during the Gaza offensive, most prominently the Palestinian Legislative Council. The cumulative impact of these policies and actions make prospects for political and economic integration between Gaza and the West Bank more remote.**

C. Nature, objectives and targets of the Israeli military operations in Gaza

1880. **Both Palestinians and Israelis whom the Mission met repeatedly stressed that the military operations carried out by Israel in Gaza from 27 December 2008 until 18 January 2009 were qualitatively different from any previous military action by Israel in the Occupied Palestinian Territory. Despite the hard conditions that have long been prevailing**

in the Gaza Strip, victims and long-time observers stated that the operations were unprecedented in their severity and that their consequences would be long-lasting.

1881. **When the Mission conducted its first visit to the Gaza Strip in early June 2009, almost five months had passed since the end of the Israeli military operations. The devastating effects of the operations on the population were, however, unequivocally manifest. In addition to the visible destruction of houses, factories, wells, schools, hospitals, police stations and other public buildings, the sight of families, including the elderly and children, still living amid the rubble of their former dwellings – no reconstruction possible due to the continuing blockade – was evidence of the protracted impact of the operations on the living conditions of the Gaza population. Reports of the trauma suffered during the attacks, the stress due to the uncertainty about the future, the hardship of life and the fear of further attacks, pointed to less tangible but not less real long-term effects.**

1882. **Women were affected in significant ways. Their situation must be given specific attention in any effort to address the consequences of the blockade, of the continuing occupation and of the latest Israeli military operations.**

1883. **The Gaza military operations were, according to the Israeli Government, thoroughly and extensively planned. While the Israeli Government has sought to portray its operations as essentially a response to rocket attacks in the exercise of its right to self-defence, the Mission considers the plan to have been directed, at least in part, at a different target: the people of Gaza as a whole.**

1884. **In this respect, the operations were in furtherance of an overall policy aimed at punishing the Gaza population for its resilience and for its apparent support for Hamas, and possibly with the intent of forcing a change in such support. The Mission considers this position to be firmly based in fact, bearing in mind what it saw and heard on the ground, what it read in the accounts of soldiers who served in the campaign, and what it heard and read from current and former military officers and political leaders whom the Mission considers to be representative of the thinking that informed the policy and strategy of the military operations.**

1885. **The Mission recognizes that the principal focus in the aftermath of military operations will often be on the people who have been killed – more than 1,400 in just three weeks. This is rightly so. Part of the functions of reports such as this is to attempt, albeit in a very small way, to restore the dignity of those whose rights have been violated in the most fundamental way of all – the arbitrary deprivation of life. It is important that the international community asserts formally and unequivocally that such violence to the most basic fundamental rights and freedoms of individuals should not be overlooked and should be condemned.**

1886. **In this respect, the Mission recognizes that not all deaths constitute violations of international humanitarian law. The principle of proportionality acknowledges that, under certain strict conditions, actions resulting in the loss of civilian life may not be unlawful. What makes the application and assessment of proportionality difficult in respect of many of the events investigated by the Mission is that deeds by the Israeli armed forces and words of military and political leaders prior to and during the operations indicate that, as a** whole, they were premised on a deliberate policy of disproportionate force aimed not at the enemy but at the "supporting infrastructure." In practice, this appears to have meant the civilian population.

1887. The timing of the first Israeli attack, at 11.30 a.m. on a weekday, when children were returning from school and the streets of Gaza were crowded with people going about their daily business, appears to have been calculated to create the greatest disruption and widespread panic among the civilian population. The treatment of many civilians detained or even killed while trying to surrender is one manifestation of the way in which the effective rules of engagement, standard operating procedures and instructions to the troops on the ground appear to have been framed in order to create an environment in which due regard for civilian lives and basic human dignity was replaced with disregard for basic international humanitarian law and human rights norms.

1888. The Mission recognizes fully that the Israeli armed forces, like any army attempting to act within the parameters of international law, must avoid taking undue risks with their soldiers' lives, but neither can they transfer that risk onto the lives of civilian men, women and children. The fundamental principles of distinction and proportionality apply on the battlefield, whether that battlefield is a built-up urban area or an open field.

1889. The repeated failure to distinguish between combatants and civilians appears to the Mission to have been the result of deliberate guidance issued to soldiers, as described by some of them, and not the result of occasional lapses.

1890. The Mission recognizes that some of those killed were combatants directly engaged in hostilities against Israel, but many were not. The outcome and the modalities of the operations indicate, in the Mission's view, that they were only partially aimed at killing leaders and members of Hamas, al-Qassam Brigades and other armed groups. They were also to a large degree aimed at destroying or incapacitating civilian property and the means of subsistence of the civilian population.

1891. It is clear from evidence gathered by the Mission that the destruction of food supply installations, water sanitation systems, concrete factories and residential houses was the result of a deliberate and systematic policy by the Israeli armed forces. It was not carried out because those objects presented a military threat or opportunity, but to make the daily process of living, and dignified living, more difficult for the civilian population.

1892. Allied to the systematic destruction of the economic capacity of the Gaza Strip, there appears also to have been an assault on the dignity of the people. This was seen not only in the use of human shields and unlawful detentions sometimes in unacceptable conditions, but also in the vandalizing of houses when occupied and the way in which people were treated when their houses were entered. The graffiti on the walls, the obscenities and often racist slogans, all constituted an overall image of humiliation and dehumanization of the Palestinian population.

1893. The operations were carefully planned in all their phases. Legal opinions and advice were given throughout the planning stages and at certain operational levels during the campaign. There were almost no mistakes made according to the Government of Israel. It is in these circumstances that the Mission concludes that what occurred in just over three weeks at the end of 2008 and the beginning of 2009 was a deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population, radically diminish its local economic capacity both to work and to provide for itself, and to force upon it an ever increasing sense of dependency and vulnerability.

1894. The Mission has noted with concern public statements by Israeli officials, including senior military officials, to the effect that the use of disproportionate force, attacks on civilian population and the destruction of civilian property are legitimate means to achieve Israel's military and political objectives. The Mission believes that such statements not only undermine the entire regime of international law, they are inconsistent with the spirit of the Charter of the United Nations and, therefore, deserve to be categorically denounced.

1895. Whatever violations of international humanitarian and human rights law may have been committed, the systematic and deliberate nature of the activities described in this report leave the Mission in no doubt that responsibility lies in the first place with those who designed, planned, ordered and oversaw the operations.

D. Occupation, resilience and civil society

1896. The accounts of more severe violence during the recent military operations did not obscure the fact that the concept of "normalcy" in the Gaza Strip has long been redefined owing to the protracted situation of abuse and lack of protection deriving from the decades-long occupation.

1897. As the Mission focused on investigating and analysing the specific matters within its mandate, Israel's continuing occupation of the Gaza Strip and the West Bank emerged as the fundamental factor underlying violations of international humanitarian and human rights law against the protected population and undermining prospects for development and peace. Israel's failure to acknowledge and exercise its responsibilities as the occupying Power further exacerbated the effects of occupation on the Palestinian people, and continue to do so. Furthermore, the harsh and unlawful practices of occupation, far from quelling resistance, breed it, including its violent manifestations. The Mission is of the view that ending occupation is a prerequisite for the return of a dignified life for Palestinians, as well as development and a peaceful solution to the conflict.

1898. The Mission was struck by the resilience and dignity shown by people in the face of dire circumstances. UNRWA Director of Operations, John Ging, relayed to the Mission the answer of a Gaza teacher during a discussion after the end of the Israeli military operations about strengthening human rights education in schools. Rather than expressing scepticism at the relevance of teaching human rights in a context of renewed denial of rights, the teacher unhesitantly supported the resumption of human rights education: "This is a war of values, and we are not going to lose it".

1899. The assiduous work of Palestinian non-governmental and civil society organizations in providing support to the population in such extreme circumstances, and in giving voice to the suffering and expectations of victims of violations deserves to be fully acknowledged. Their role in helping to sustain the resilience and dignity of the population cannot be

overstated. The Mission heard many accounts of NGO workers, doctors, ambulance drivers, journalists, human rights monitors, who, at the height of the military operations, risked their lives to be of service to people in need. They frequently relayed the anxiety of having to choose between remaining close to their own families or continuing to work to assist others in need, thereby often being cut off from news about the safety or whereabouts of family members. The Mission wishes to pay tribute to the courage and work of the numerous individuals who so contributed to alleviating the suffering of the population and to report on the events in Gaza.

E. Rocket and mortar attacks in Israel

1900. **Palestinian armed groups have launched thousands of rockets and mortars into Israel since April 2001. These have succeeded in causing terror within Israel's civilian population, as evidenced by the high rates of psychological trauma within the affected communities. The attacks have also led to an erosion of the social, cultural and economic lives of the communities in southern Israel, and have affected the rights to education of the tens of thousands of children and young adults who attend classes in the affected areas.**

1901. **Between 27 December 2008 and 18 January 2009, these attacks left four people dead and hundreds injured. That there have not been more casualties is due to a combination of luck and measures taken by the Israeli Government, including the fortification of public buildings, the construction of shelters and, in times of escalated hostilities, the closure of schools.**

1902. **The Mission notes, with concern, that Israel has not provided the same level of protection from rockets and mortars to affected Palestinian citizens as it has to Jewish citizens. In particular, it has failed to provide public shelters or fortification of schools, for example, to the Palestinian communities living in the unrecognized villages and some of the recognized villages. It ought to go without saying that the thousands of Palestinian Israelis– including a significant number of children – who live within the range of rocket fire, deserve the same protection as the Israeli Government provides to its Jewish citizens.**

F. Dissenting voices in Israel

1903. **While the Israeli military offensive in Gaza was widely supported by the Israeli public, there were also dissenting voices, which expressed themselves through demonstrations, protests, as well as public reporting on Israel's conduct. The Mission is of the view that actions of the Israeli Government during and following the military operations in the Gaza Strip, including interrogation of political activists, repression of criticism and sources of potential criticism of Israeli military actions, in particular NGOs, have contributed significantly to a political climate in which dissent with the Government and its actions in the Occupied Palestinian Territory is not tolerated. The denial of media access to Gaza and the continuing denial of access to human rights monitors are, in the Mission's view, an attempt both to remove the Government's actions in the Occupied Palestinian Territory from public scrutiny and to impede investigations and reporting of the conduct of the parties to the conflict in the Gaza Strip.**

1904. **In this context of increased intolerance for dissenting opinions in Israel, the Mission wishes to acknowledge the difficult work of NGOs in Israel, which courageously continue to express criticism of Government action that violates international human rights and humanitarian law. The work of these organizations is essential not only to ensure independent information to the Israeli and international public, but also to encourage a facts-based debate about these issues within Israeli society.**

G. The impact of dehumanization

1905. **As in many conflicts, one of the features of the Palestinian-Israeli conflict is the dehumanization of the other, and of victims in particular. Palestinian psychiatrist Dr. Iyad al-Sarraj explained the cycle of aggression and victimization through which "the Palestinian in the eyes of the Israeli soldier is not an equal human being. Sometimes [...] even becomes a demon [...]" This "culture of demonization and dehumanization" adds to a state of paranoia. "Paranoia has two sides, the side of victimization, I am a victim of this world, the whole world is against me and on the other side, I am superior to this world and I can oppress it. This leads to what is called the arrogance of power." As Palestinians, "we look in general to the Israelis as demons and that we can hate them, that what we do is a reaction, and we say that the Israelis can only understand the language of power. The same thing that we say about the Israelis they say about us, that we only understand the language of violence or force. There we see the arrogance of power and [the Israeli] uses it without thinking of humanity at all. In my view we are seeing not only a state of war but also a state that is cultural and psychological and I hope, I wish that the Israelis would start, and there are many, many Jews in the world and in Israel that look into themselves, have an insight that would make them, alleviate the fear that they have because there's a state of fear in Israel, in spite of all the power, and that they would start to walk on the road of dealing with the consequences of their own victimization and to start dealing with the Palestinian as a human being, a full human being who's equal in rights with the Israeli and also the other way around, the Palestinian must deal with himself, must respect himself and respect his own differences in order to be able to stand before the Israeli also as a full human being with equal rights and obligations. This is the real road for justice and for peace."**

1906. **Israeli college teacher Ofer Shinar offered a similar analysis: "Israeli society's problem is that, because of the conflict, Israeli society feels itself to be a victim and to a large extent that's justified and it's very difficult for Israeli society to move and to feel that it can also see the other side and to understand that the other side is also a victim. This I think is the greatest tragedy of the conflict and it's terribly difficult to overcome it [...] I think that the initiative that you've taken in listening to [...] people [...] is very important. The message that you're giving Israeli society is absolutely unambiguous that you are impartial that you should be able to see that the feeling of being a victim is something that characterizes both sides. What requires you to take this responsibility is the fact that you have to understand how difficult it is to get this message through to Israeli society, how closed the Israeli society is, how difficult it is for Israeli society to understand that the other side is not just the party which is infringing our own human rights, but how they are having their human rights infringed, how they are suffering as well."**

1907. The Mission, in fulfilling its mandate to investigate alleged violations of international law that occurred in the context of the December 2008 – January 2009 military operations in Gaza, spoke predominantly to those most affected by the most recent events in a conflict that has spanned decades. As may be expected, the Mission found societies scarred by living in conflict with significant psychological trauma stemming from a life that may rightly seem to those living in more peaceful countries to be unbearable.

1908. Both the Palestinians and the Israelis are legitimately angered at the lives that they are forced to lead. For the Palestinians, the anger about individual events – the civilian casualties, injuries and destruction in Gaza following from military attacks, the blockade, the continued construction of the Wall outside of the 1967 borders – feed into an underlying anger about the continuing Israeli occupation, its daily humiliations and their as-yet-unfulfilled right to self-determination. For the Israelis, the public statements of Palestinian armed groups celebrating rocket and mortar attacks on civilians strengthen a deep-rooted concern that negotiation will yield little and that their nation remains under existential threat from which only it can protect its people. In this way, both the Israelis and the Palestinians share a secret fear – for some, a belief – that each has no intention of accepting the other's right to a country of their own. This anger and fear are unfortunately ably represented by many politicians.

1909. Some Israelis pointed out to the Mission that policies of the Israeli Government relating to the isolation of the Gaza Strip and the tighter restrictions on the movement of Palestinians within the Occupied Palestinian Territory and between the Occupied Palestinian Territory and Israel, have contributed to increasing the distance between Palestinians and Israelis, reducing the opportunities to interact other than in situations of control and coercion such as checkpoints and military posts.

1910. In this context, the Mission was encouraged by reports of exchange and cooperation between Palestinians and Israelis, for example with regard to mental health specialists working with Palestinians from Gaza and southern Israel's communities, and with regard to cooperation between Magen David Adom and the Palestinian Red Crescent Society, especially in the West Bank, as they fulfil a shared commitment to providing humanitarian assistance to the communities in which they work, regardless of the ethnicity of the patient who lies before them.

H. The intra-Palestinian situation

1911. The division and violence between Fatah and Hamas, which culminated in the establishment of parallel governance entities and structures in the Gaza Strip and the West Bank, is having adverse consequences for the human rights of the Palestinian population in both areas, as well as contributing to erode the rule of law in the Occupied Palestinian Territory in addition to the threats already linked to foreign occupation. Even with the narrow focus of the Mission on violations relevant to the context of the December-January military operations, the diminishing protections for Palestinians are evident from the cases of arbitrary deprivation of life, arbitrary detention of political activists or sympathizers, limitations on freedom of expression and association, and abuses by security forces. The situation is compounded by the ever reducing role of the judiciary in ensuring the rule of law and legal remedies for violations. A resolution of the internal divisions based on the

free will and decisions of Palestinians and without external interference would strengthen the ability of Palestinian authorities and institutions to protect the rights of the people under their responsibility.

I. The need for protection and the role of the international community

1912. **International law sets obligations on States not only to respect but also to ensure respect for international humanitarian law. The International Court of Justice stated in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* that "all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention".**

1913. **The 2005 World Summit Outcome document recognized that the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from, inter alia, war crimes and crimes against humanity. The document stressed that the Members of the United Nations are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In 2009, the Secretary-General, in his report on implementing the responsibility to protect, noted that the enumeration of these crimes did not "detract in any way from the much broader range of obligations existing under international humanitarian law, international human rights law, refugee law and international criminal law."**

1914. **After decades of sustained conflict, the level of threat to which both Palestinians and Israelis are subjected has not abated, but if anything increased with continued escalations of violence, death and suffering for the civilian population, of which the December-January military operations in Gaza are only the most recent occurrence. Israel is therefore also failing to protect its own citizens by refusing to acknowledge the futility of resorting to violent means and military power.**

1915. **Israeli incursions and military actions in the Gaza Strip did not stop after the end of the military operations of December – January.**

1916. **The Security Council has placed the protection of civilian populations on its agenda as a regular item, recognizing it as a matter falling within its responsibility. The Mission notes that the international community has been largely silent and has to date failed to act to ensure the protection of the civilian population in the Gaza Strip and generally the Occupied Palestinian Territory. Suffice it to notice the lack of adequate reaction to the blockade and its consequences, to the Gaza military operations and, in their aftermath, to the continuing obstacles to reconstruction. The Mission also considers that the isolation of the Gaza authorities and the sanctions against the Gaza Strip have had a negative impact on the protection of the population. Immediate action to enable reconstruction in Gaza is** no doubt required. However, it also needs to be accompanied by a firmer and principled stance by the international community on violations of international humanitarian and human rights law and long delayed action to end them. Protection of civilian populations requires respect for international law and accountability for violations. When the international community does not live up to its own legal standards, the threat to the international rule of law is obvious and potentially far-reaching in its consequences.

1917. The Mission acknowledges and emphasizes the impressive and essential role played by the staff of the numerous United Nations agencies and bodies working to assist the population of the Occupied Palestinian Territory in all aspects of daily life. An additional disturbing feature of the December-January military operations was the disregard in several incidents, some of which are documented in this report, for the inviolability of United Nations premises, facilities and staff. It ought to go without saying that attacks on the United Nations are unacceptable and undermine its ability to fulfil its protection and assistance role vis-à-vis a population that so badly needs it.

J. Summary of legal findings

1918. Detailed legal findings by the Mission are included in each of the chapters of the report where specific facts and events are analysed. The following is a summary of those findings.

1. Actions by Israel in Gaza in the context of the military operations of 27 December 2008 to 18 January 2009

(a) Precautions in launching attacks

1919. The Mission finds that in a number of cases Israel failed to take feasible precautions required by customary law reflected in article 57 (2) (a) (ii) of Additional Protocol I to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. The firing of white phosphorus shells over the UNRWA compound in Gaza City is one of such cases in which precautions were not taken in the choice of weapons and methods in the attack, and these facts were compounded by reckless disregard for the consequences. The intentional strike at al-Quds hospital using high-explosive artillery shells and white phosphorous in and around the hospital also violated articles 18 and 19 of the Fourth Geneva Convention. With regard to the attack against al-Wafa hospital, the Mission found a violation of the same provisions, as well as a violation of the customary law prohibition against attacks which may be expected to cause excessive damage to civilians and civilian objects.

1920. The Mission finds that the different kinds of warnings issued by Israel in Gaza cannot be considered as sufficiently effective in the circumstances to comply with customary law as reflected in Additional Protocol I, article 57 (2) (c). While some of the leaflet warnings were specific in nature, the Mission does not consider that general messages telling people to leave wherever they were and go to city centres, in the particular circumstances of the military campaign, meet the threshold of effectiveness. Firing missiles into or on top of buildings as a "warning" is essentially a dangerous practice and a form of attack rather than a warning.

(b) Incidents involving the killing of civilians

1921. The Mission found numerous instances of deliberate attacks on civilians and civilian objects (individuals, whole families, houses, mosques) in violation of the fundamental international humanitarian law principle of distinction, resulting in deaths and serious injuries. In these cases the Mission found that the protected status of civilians was not respected and the attacks were intentional, in clear violation of customary law reflected in article 51 (2) and 75 of Additional Protocol I, article 27 of the Fourth Geneva Convention and articles 6 and 7 of the International Covenant on Civil and Political Rights. In some cases the Mission additionally concluded that the attack was also launched with the intention of spreading terror among the civilian population. Moreover, in several of the incidents investigated, the Israeli armed forces not only did not use their best efforts to permit humanitarian organizations access to the wounded and medical relief, as required by customary international law reflected in article 10 (2) of Additional Protocol I, but they arbitrarily withheld such access.

1922. With regard to one incident investigated, involving the death of at least 35 Palestinians, the Mission finds that the Israeli armed forces launched an attack which a reasonable commander would have expected to cause excessive loss of civilian life in relation to the military advantage sought, in violation of customary international humanitarian law as reflected in Additional Protocol I, articles 57 (2) (a) (ii) and (iii). The Mission finds a violation of the right to life (ICCPR, article 6) of the civilians killed in this incident.

1923. The Mission also concludes that Israel, by deliberately attacking police stations and killing large numbers of policemen (99 in the incidents investigated by the Mission) during the first minutes of the military operations, failed to respect the principle of proportionality between the military advantage anticipated by killing some policemen who might have been members of Palestinian armed groups and the loss of civilian life (the majority of policemen and members of the public present in the police stations or nearby during the attack). Therefore, these were disproportionate attacks in violation of customary international law. The Mission finds a violation of the right to life (ICCPR, article 6) of the policemen killed in these attacks who were not members of Palestinian armed groups.

(c) Certain weapons used by the Israeli armed forces

1924. In relation to the weapons used by the Israeli armed forces during military operations, the Mission accepts that white phosphorous, flechettes and heavy metal (such as tungsten) are not currently proscribed under international law. Their use is, however, restricted or even prohibited in certain circumstances by virtue of the principles of proportionality and precautions necessary in the attack. Flechettes, as an area weapon, are particularly unsuitable for use in urban settings, while, in the Mission's view, the use of white phosphorous as an obscurant at least should be banned because of the number and variety of hazards that attach to the use of such a pyrophoric chemical.

(d) Treatment of Palestinians in the hands of the Israeli armed forces

(i) Use of human shields

1925. The Mission investigated several incidents in which the Israeli armed forces used local Palestinian residents to enter houses which might be booby-trapped or harbour enemy combatants (this practice, known in the West Bank as "neighbour procedure", was called "Johnnie procedure" during the military operations in Gaza). The Mission found that the practice constitutes the use of human shields prohibited by international humanitarian law. It further constitutes a violation of the right to life, protected in article 6 of ICCPR, and of the prohibition against cruel and inhuman treatment in its article 7.

1926. The questioning of Palestinian civilians under threat of death or injury to extract information about Hamas and Palestinian combatants and tunnels constitutes a violation of article 31 of the Fourth Geneva Convention, which prohibits physical or moral coercion against protected persons.

(ii) Detention

1927. The Mission found that the Israeli armed forces in Gaza rounded up and detained large groups of persons protected under the Fourth Geneva Convention. The Mission finds that their detention cannot be justified either as detention of "unlawful combatants" or as internment of civilians for imperative reasons of security. The Mission considers that the severe beatings, constant humiliating and degrading treatment and detention in foul conditions allegedly suffered by individuals in the Gaza Strip under the control of the Israeli armed forces and in detention in Israel, constitute a failure to treat protected persons humanely in violation of article 27 of the Fourth Geneva Convention, as well as violations of articles 7 and 10 of the International Covenant on Civil and Political Rights regarding torture and the treatment of persons in detention, and of its article 14 with regard to due process guarantees. The treatment of women during detention was contrary to the special respect for women required under customary law as reflected in the article 76 of Additional Protocol I. The Mission finds that the rounding-up of large groups of civilians and their prolonged detention under the circumstances described in this report constitute a collective penalty on those persons in violation of article 33 of the Fourth Geneva Convention and article 50 of the Hague Regulations. Such treatment amounts to measures of intimidation or terror prohibited by article 33 of the Fourth Geneva Convention.

(e) Destruction of property

1928. The Mission finds that the attacks against the Palestinian Legislative Council building and the main prison in Gaza constituted deliberate attacks on civilian objects in violation of the rule of customary international humanitarian law whereby attacks must be strictly limited to military objectives.

1929. The Mission also finds that the Israeli armed forces unlawfully and wantonly attacked and destroyed without military necessity a number of food production or food-processing objects and facilities (including mills, land and greenhouses), drinking-water installations, farms and animals in violation of the principle of distinction. From the facts

ascertained by it, the Mission finds that this destruction was carried out with the purpose of denying sustenance to the civilian population, in violation of customary law reflected in article 54 (2) of the First Additional Protocol. The Mission further concludes that the Israeli armed forces carried out widespread destruction of private residential houses, water wells and water tanks unlawfully and wantonly.

1930. **In addition to being violations of international humanitarian law, these extensive wanton acts of destruction amount to violations of Israel's duties to respect the right to an adequate standard of living of the people in the Gaza Strip, which includes the rights to food, water and housing, as well as the right to the highest attainable standard of health, protected under articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.**

(f) Impact of the blockade and the military operations on the Gaza population

1931. **The Mission concludes that the blockade policies implemented by Israel against the Gaza Strip, in particular the closure of or restrictions imposed on border crossings in the immediate period before the military operations, subjected the local population to extreme hardship and deprivations that amounted to a violation of Israel's obligations as an occupying Power under the Fourth Geneva Convention. These measures led to a severe deterioration and regression in the levels of realization of economic and social rights of Palestinians in the Gaza Strip and weakened its social and economic fabric, leaving health, education, sanitation and other essential services in a very vulnerable position to cope with the immediate effects of the military operations.**

1932. **The Mission finds that, despite the information circulated by Israel about the humanitarian relief schemes in place during the military operations, Israel has essentially violated its obligation to allow free passage of all consignments of medical and hospital objects, food and clothing that were needed to meet the urgent humanitarian needs of the civilian population in the context of the military operations, which is in violation of article 23 of the Fourth Geneva Convention.**

1933. **In addition to the above general findings, the Mission also considers that Israel has violated its specific obligations under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, including the rights to peace and security, free movement, livelihood and health.**

1934. **The Mission concludes that the conditions resulting from deliberate actions of the Israeli armed forces and the declared policies of the Government with regard to the Gaza Strip before, during and after the military operation cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip. The Mission, therefore, finds a violation of the provisions of article 33 of the Fourth Geneva Convention.**

(g) Grave breaches of the Geneva Conventions and acts raising individual criminal responsibility under international criminal law

1935. **From the facts gathered, the Mission found that the following grave breaches of the Fourth Geneva Convention were committed by the Israeli armed forces in Gaza: wilful**

killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, and extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly. As grave breaches these acts give rise to individual criminal responsibility. The Mission notes that the use of human shields also constitutes a war crime under the Rome Statute of the International Criminal Court.

1936. **The Mission further considers that the series of acts that deprive Palestinians in the Gaza Strip of their means of subsistence, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their rights to access a court of law and an effective remedy, could lead a competent court to find that the crime of persecution, a crime against humanity, has been committed.**

2. Actions by Israel in the West Bank in the context of the military operations in Gaza from 27 December 2008 to 18 January 2009

(a) Treatment of Palestinians in the West Bank by Israeli security forces, including use of excessive or lethal force during demonstrations

1937. **With regard to acts of violence by settlers against Palestinians, the Mission concludes that Israel has failed to fulfil its international obligations to protect the Palestinians from violence by private individuals under both international human rights law and international humanitarian law. In some instances security forces acquiesced to the acts of violence in violation of the prohibition against cruel, inhuman or degrading treatment. When this acquiescence occurs only in respect of violence against Palestinians by settlers and not vice versa, it would amount to discrimination on the basis of national origin, prohibited under ICCPR.**

1938. **Israel also violated a series of human rights by unlawfully repressing peaceful public demonstrations and using excessive force against demonstrators. The use of firearms, including live ammunitions, and the use of snipers resulting in the death of demonstrators are a violation of article 6 of ICCPR as an arbitrary deprivation of life and, in the circumstances examined by the Mission, appear to indicate an intention or at least a recklessness towards causing harm to civilians which may amount to wilful killing.**

1939. **Excessive use of force that resulted in injury rather than death constitutes violations of a number of standards, including articles 7 and 9 of ICCPR. These violations are compounded by the seemingly discriminatory "open fire regulations" for security forces dealing with demonstrations, based on the presence of persons with a particular nationality, violating the principle of non-discrimination in ICCPR (art. 2) as well as under article 27 of the Fourth Geneva Convention.**

1940. **The Mission finds that Israel failed to investigate, and when appropriate prosecute, acts by its agents or by third parties involving serious violations of international humanitarian law and human rights law.**

1941. **The Mission was alarmed at the reported increase in settler violence in the past year and the failure of the Israeli security forces to prevent settlers' attacks against Palestinian civilians and their property. These are accompanied by a series of violations by Israeli**

forces or acquiesced by them, including the removal of residential status from Palestinians, which could eventually lead to a situation of virtual deportation and entail additional violations of other rights.

(b) Detention of Palestinians by Israel

1942. **The Mission analysed information it received on the detention of Palestinians in Israeli prisons during or in the context of the military operations of December 2008–January 2009 and found those practices generally inconsistent with human rights and international humanitarian law. The military court system to which Palestinians from the Occupied Palestinian Territory are subjected deprives them of due process guarantees in keeping with international law.**

1943. **The Mission finds that the detention of members of the Palestinian Legislative Council by Israel violates the right not to be arbitrarily detained, as protected by article 9 of ICCPR. Insofar as it is based on political affiliation and prevents those members from participating in the conduct of public affairs, it is also in violation of its articles 25 recognizing the right to take part in public affairs and 26, which provides for the right to equal protection under the law. Insofar as their detention is unrelated to their individual behaviour, it constitutes collective punishment, prohibited by article 33 of the Fourth Geneva Convention. Information on the detention of large numbers of children and their treatment by Israeli security forces point to violations of their rights under ICCPR and the Convention on the Rights of the Child.**

(c) Violations of the right to free movement and access

1944. **The Mission finds that the extensive restrictions imposed by Israel on the movement and access of Palestinians in the West Bank are disproportionate to any legitimate objective served and in violation of article 27 of the Fourth Geneva Convention and article 12 of ICCPR, guaranteeing freedom of movement.**

1945. **Where checkpoints become a site of humiliation of the protected population by military or civilian operators, this may entail a violation of the customary law rule reflected in article 75 (2) (b) of Additional Protocol I.**

1946. **The continued construction of settlements in occupied territory constitutes a violation of article 49 of the Fourth Geneva Convention. The extensive destruction and appropriation of property, including land confiscation and house demolitions in the West Bank, including East Jerusalem, not justified by military necessity and carried out unlawfully and wantonly, amounts to a grave breach under article 147 of the Fourth Geneva Convention.**

1947. **Insofar as movement and access restrictions, the settlements and their infrastructure, demographic policies vis-à-vis Jerusalem and "Area C" of the West Bank, as well as the separation of Gaza from the West Bank, prevent a viable, contiguous and sovereign Palestinian State from arising, they are in violation of the *jus cogens* right to self-determination.**

3. Actions by Israel in Israel

1948. **In relation to alleged violations within Israel, the Mission concludes that, although there does not appear to be a policy in this respect, there were occasions when reportedly the authorities placed obstacles in the way of protesters seeking to exercise their right to peaceful assembly and freedom of speech to criticize Israel's military actions in the Gaza Strip. These rights are protected by the International Covenant on Civil and Political Rights. Instances of physical violence against protesters and other humiliations, not rising to the level of physical violence, of the protesters by the police violated Israel's obligations under article 10 of the Covenant. The Mission is also concerned about activists being compelled to attend interviews with the General Security Services (*Shabak*), which reportedly creates an atmosphere intolerant of dissent within Israel. Hostile retaliatory actions against civil society organizations by the Government of Israel for criticisms of the Israeli authorities and for exposing alleged violations of international human rights law and international humanitarian law during the military operations are inconsistent with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.**

1949. **The Mission finds that the imposition of a near blanket exclusion of the media and human rights monitors from Gaza since 5 November 2008 and throughout the operations is inconsistent with Israel's obligations with regard to the right to access to information.**

4. Actions by Palestinian armed groups

1950. **In relation to the firing of rockets and mortars into southern Israel by Palestinian armed groups operating in the Gaza Strip, the Mission finds that the Palestinian armed groups fail to distinguish between military targets and the civilian population and civilian objects in southern Israel. The launching of rockets and mortars which cannot be aimed with sufficient precisions at military targets breaches the fundamental principle of distinction. Where there is no intended military target and the rockets and mortars are launched into civilian areas, they constitute a deliberate attack against the civilian population. These actions would constitute war crimes and may amount to crimes against humanity.**

1951. **The Mission concludes that the rocket and mortars attacks, launched by Palestinian armed groups operating from Gaza, have caused terror in the affected communities of southern Israel. The attacks have caused loss of life and physical and mental injury to civilians as well as damaging private houses, religious buildings and property, and eroded the economic and cultural life of the affected communities and severely affected economic and social rights of the population.**

1952. **With regard to the continuing detention of Israeli soldier Gilad Shalit, the Mission finds that, as a soldier who belongs to the Israeli armed forces and who was captured during an enemy incursion into Israel, Gilad Shalit meets the requirements for prisoner-of-war status under the Third Geneva Convention and should be protected, treated humanely and be allowed external communication as appropriate according to that Convention.**

1953. **The Mission also examined whether the Palestinian armed groups complied with their obligations under international humanitarian law to take constant care to minimize the risk of harm to the civilian population in Gaza among whom the hostilities were being conducted. The conduct of hostilities in built-up areas does not, of itself, constitute a violation of international law. However, launching attacks – whether of rockets and mortars at the population of southern Israel or at the Israeli armed forces inside Gaza – close to civilian or protected buildings constitutes a failure to take all feasible precautions. In cases where this occurred, the Palestinian armed groups would have unnecessarily exposed the civilian population of Gaza to the inherent dangers of the military operations taking place around them. The Mission found no evidence to suggest that Palestinian armed groups either directed civilians to areas where attacks were being launched or that they forced civilians to remain within the vicinity of the attacks. The Mission also found no evidence that members of Palestinian armed groups engaged in combat in civilian dress. Although in the one incident of an Israeli attack on a mosque it investigated the Mission found that there was no indication that that mosque was used for military purposes or to shield military activities, the Mission cannot exclude that this might have occurred in other cases.**

5. Actions by responsible Palestinian authorities

1954. **Although the Gaza authorities deny any control over armed groups and responsibility for their acts, in the Mission's view, if they failed to take the necessary measures to prevent the Palestinian armed groups from endangering the civilian population, the Gaza authorities would bear responsibility for the damage arising to the civilians living in Gaza.**

1955. **The Mission finds that security services under the control of the Gaza authorities carried out extrajudicial executions, arbitrary arrests, detentions and ill-treatment of people, in particular political opponents, which constitute serious violations of the human rights to life, to liberty and security of the person, to freedom from torture or cruel, inhuman or degrading treatment or punishment, to be protected against arbitrary arrest and detention, to a fair and impartial legal proceeding; and to freedom of opinion and expression, including freedom to hold opinions without interference.**

1956. **The Mission also concludes that the Palestinian Authority's actions against political opponents in the West Bank, which started in January 2006 and intensified during the period between 27 December 2008 and 18 January 2009, constitute violations of human rights and of the Palestinians' own Basic Law. Detentions on political grounds violate the rights to liberty and security of person, to a fair trial and the right not to be discriminated against on the basis of one's political opinion, which are all part of customary international law. Reports of torture and other forms of ill-treatment during arrest and detention and of death in detention require prompt investigation and accountability.**

K. The need for accountability

1957. **The Mission was struck by the repeated comment of Palestinian victims, human rights defenders, civil society interlocutors and officials that they hoped that this would be the last investigative mission of its kind, because action for justice would follow from it. It**

was struck, as well, by the comment that every time a report is published and no action follows, this "emboldens Israel and her conviction of being untouchable". To deny modes of accountability reinforces impunity, and tarnishes the credibility of the United Nations and of the international community. The Mission believes these comments ought to be at the forefront in the consideration by Members States and United Nations bodies of its findings and recommendations and action consequent upon them.

1958. **The Mission is firmly convinced that justice and respect for the rule of law are the indispensable basis for peace. The prolonged situation of impunity has created a justice crisis in the Occupied Palestinian Territory that warrants action.**

1959. **After reviewing Israel's system of investigation and prosecution of serious violations of human rights and humanitarian law, in particular of suspected war crimes and crimes against humanity, the Mission found major structural flaws that, in its view, make the system inconsistent with international standards. With military "operational debriefings" at the core of the system, there is no effective and impartial investigation mechanism and victims of such alleged violations are deprived of any effective or prompt remedy. Furthermore, such investigations, being internal to the Israeli military authority, do not comply with international standards of independence and impartiality. The Mission believes that the few investigations conducted by the Israeli authorities on alleged serious violations of international human rights and humanitarian law and, in particular, alleged war crimes, in the context of the military operations in Gaza between 27 December 2008 and 18 January 2009, are affected by the defects in the system, have been unduly delayed despite the gravity of the allegations, and, therefore, lack the required credibility and conformity with international standards. The Mission is concerned that investigations of relatively less serious violations that the Government of Israel claims to be investigating have also been unduly protracted.**

1960. **The Mission noted the pattern of delays, inaction or otherwise unsatisfactory handling by Israeli authorities of investigations, prosecutions and convictions of military personnel and settlers for violence and offences against Palestinians, including in the West Bank, as well as their discriminatory outcome. Additionally, the current constitutional and legal framework in Israel provides very few possibilities, if any, for Palestinians to seek compensation and reparations.**

1961. **In the light of the information it reviewed and its analysis, the Mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission is also of the view that the system presents inherently discriminatory features that make the pursuit of justice for Palestinian victims extremely difficult.**

1962. **With regard to allegations of violations of international humanitarian law falling within the jurisdiction of responsible Palestinian authorities in Gaza, the Mission finds that these allegations have not been investigated.**

1963. **The Mission notes that the responsibility to investigate violations of international human rights and humanitarian law, prosecute if appropriate and try perpetrators belongs in the first place to domestic authorities and institutions. This is a legal obligation**

incumbent on States and State-like entities. However, where domestic authorities are unable or unwilling to comply with this obligation, international justice mechanisms must be activated to prevent impunity.

1964. **The Mission believes that, in the circumstances, there is little potential for accountability for serious violations of international humanitarian and human rights law through domestic institutions in Israel and even less in Gaza. The Mission is of the view that long-standing impunity has been a key factor in the perpetuation of violence in the region and in the reoccurrence of violations, as well as in the erosion of confidence among Palestinians and many Israelis concerning prospects for justice and a peaceful solution to the conflict.**

1965. **The Mission considers that several of the violations referred to in this report amount to grave breaches of the Fourth Geneva Convention. It notes that there is a duty imposed by the Geneva Conventions on all high contracting parties to search for and bring before their courts those responsible for the alleged violations.**

1966. **The Mission considers that the serious violations of international humanitarian law recounted in this report fall within the subject-matter jurisdiction of the International Criminal Court. The Mission notes that the United Nations Security Council has long recognized the impact of the situation in the Middle East, including the Palestinian question, on international peace and security, and that it regularly considers and reviews this situation. The Mission is persuaded that, in the light of the long-standing nature of the conflict, the frequent and consistent allegations of violations of international humanitarian law against all parties, the apparent increase in intensity of such violations in the recent military operations, and the regrettable possibility of a return to further violence, meaningful and practical steps to end impunity for such violations would offer an effective way to deter such violations recurring in the future. The Mission is of the view that the prosecution of persons responsible for serious violations of international humanitarian law would contribute to ending such violations, to the protection of civilians and to the restoration and maintenance of peace.**

XXXI. RECOMMENDATIONS

1967. **The Mission makes the following recommendations related to:**

(a) Accountability for serious violations of international humanitarian law;

(b) Reparations;

(c) Serious violations of human rights law;

(d) The blockade and reconstruction;

(e) The use of weapons and military procedures;

(f) The protection of human rights organizations and defenders;

(g) Follow-up to the Mission's recommendations.

1968. **To the Human Rights Council,**

(a) The Mission recommends that the United Nations Human Rights Council should endorse the recommendations contained in this report, take appropriate action to implement them as recommended by the Mission and through other means as it may deem appropriate, and continue to review their implementation in future sessions;

(b) In view of the gravity of the violations of international human rights and humanitarian law and possible war crimes and crimes against humanity that it has reported, the Mission recommends that the United Nations Human Rights Council should request the United Nations Secretary-General to bring this report to the attention of the United Nations Security Council under Article 99 of the Charter of the United Nations so that the Security Council may consider action according to the Mission's relevant recommendations below;

(c) The Mission further recommends that the United Nations Human Rights Council should formally submit this report to the Prosecutor of the International Criminal Court;

(d) The Mission recommends that the Human Rights Council should submit this report to the General Assembly with a request that it should be considered;

(e) The Mission recommends that the Human Rights Council should bring the Mission's recommendations to the attention of the relevant United Nations human rights treaty bodies so that they may include review of progress in their implementation, as may be relevant to their mandate and procedures, in their periodic review of compliance by Israel with its human rights obligations. The Mission further recommends that the Human Rights Council should consider review of progress as part of its universal periodic review process.

1969. **To the United Nations Security Council,**

(a) The Mission recommends that the Security Council should require the Government of Israel, under Article 40 of the Charter of the United Nations:

(i) To take all appropriate steps, within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of international humanitarian and international human rights law reported by the Mission and any other serious allegations that might come to its attention;

(ii) To inform the Security Council, within a further period of three months, of actions taken, or in process of being taken, by the Government of Israel to inquire into, investigate and prosecute such serious violations;

(b) The Mission further recommends that the Security Council should at the same time establish an independent committee of experts in international humanitarian and human rights law to monitor and report on any domestic legal or other proceedings undertaken by the Government of Israel in relation to the aforesaid investigations. Such

committee of experts should report at the end of the six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the Government of Israel, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary. The committee should be appropriately supported by the Office of the United Nations High Commissioner for Human Rights;

(c) **The Mission recommends that, upon receipt of the committee's report, the Security Council should consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40 by the appropriate authorities of the State of Israel, again acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to article 13 (b) of the Rome Statute;**

(d) **The Mission recommends that the Security Council should require the independent committee of experts referred to in subparagraph (b) to monitor and report on any domestic legal or other proceedings undertaken by the relevant authorities in the Gaza Strip in relation to the aforesaid investigations. The committee should report at the end of the six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the relevant authorities in Gaza, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been taken or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary;**

(e) **The Mission recommends that, upon receipt of the committee's report, the Security Council should consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40 by the appropriate authorities in Gaza, acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to article 13 (b) of the Rome Statute;**

(f) **The Mission recommends that lack of cooperation by the Government of Israel or the Gaza authorities with the work of the committee should be regarded by the Security Council to be obstruction of the work of the committee.**

1970. **To the Prosecutor of the International Criminal Court, with reference to the declaration under article 12 (3) received by the Office of the Prosecutor of the International Criminal Court from the Government of Palestine, the Mission considers that accountability for victims and the interests of peace and justice in the region require that the Prosecutor should make the required legal determination as expeditiously as possible.**

1971. **To the General Assembly,**

(a) The Mission recommends that the General Assembly should request the Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian law and human rights in relation to the facts in this report and any other relevant facts in the context of the military operations in Gaza, including the implementation of the Mission's recommendations. The General Assembly may remain appraised of the matter until it is satisfied that appropriate action is taken at the domestic or international level in order to ensure justice for victims and accountability for perpetrators. The General Assembly may consider whether additional action within its powers is required in the interests of justice, including under its resolution 377 (V) on uniting for peace;

(b) The Mission recommends that the General Assembly should establish an escrow fund to be used to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to Israel during the December–January military operation and actions in connection with it, and that the Government of Israel should pay the required amounts into such fund. The Mission further recommends that the General Assembly should ask the Office of the United Nations High Commissioner for Human Rights to provide expert advice on the appropriate modalities to establish the escrow fund;

(c) The Mission recommends that the General Assembly should ask the Government of Switzerland to convene a conference of the high contracting parties to the Fourth Geneva Convention of 1949 on measures to enforce the Convention in the Occupied Palestinian Territory and to ensure its respect in accordance with its article 1;

(d) The Mission recommends that the General Assembly should promote an urgent discussion on the future legality of the use of certain munitions referred to in this report, and in particular white phosphorous, flechettes and heavy metal such as tungsten. In such discussion the General Assembly should draw inter alia on the expertise of the International Committee of the Red Cross (ICRC). The Mission further recommends that the Government of Israel should undertake a moratorium on the use of such weapons in the light of the human suffering and damage they have caused in the Gaza Strip.

1972. **To the State of Israel,**

(a) The Mission recommends that Israel should immediately cease the border closures and restrictions on passage through border crossings with the Gaza Strip and allow the passage of goods necessary and sufficient to meet the needs of the population, for the recovery and reconstruction of housing and essential services, and for the resumption of meaningful economic activity in the Gaza Strip;

(b) The Mission recommends that Israel should cease the restrictions on access to the sea for fishing purposes imposed on the Gaza Strip and allow such fishing activities within the 20 nautical miles as provided for in the Oslo Accords. It further recommends that Israel should allow the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel;

(c) Israel should initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel. The Mission recommends that Israel should avail itself of the expertise of the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Human Rights and other relevant bodies, and Israeli experts, civil society organizations with the relevant expertise and specialization, in order to ensure compliance in this respect with international humanitarian law and international human rights law. In particular such rules of engagement should ensure that the principles of proportionality, distinction, precaution and non-discrimination are effectively integrated in all such guidance and in any oral briefings provided to officers, soldiers and security forces, so as to avoid the recurrence of Palestinian civilian deaths, destruction and affronts on human dignity in violation of international law;

(d) The Mission recommends that Israel should allow freedom of movement for Palestinians within the Occupied Palestinian Territory - within the West Bank, including East Jerusalem, between the Gaza Strip and the West Bank, and between the Occupied Palestinian Territory and the outside world - in accordance with international human rights standards and international commitments entered into by Israel and the representatives of the Palestinian people. The Mission further recommends that Israel should forthwith lift travel bans currently placed on Palestinians by reason of their human rights or political activities;

(e) The Mission recommends that Israel should release Palestinians who are detained in Israeli prisons in connection with the occupation. The release of children should be an utmost priority. The Mission further recommends that Israel should cease the discriminatory treatment of Palestinian detainees. Family visits for prisoners from Gaza should resume;

(f) The Mission recommends that Israel should forthwith cease interference with national political processes in the Occupied Palestinian Territory, and as a first step release all members of the Palestinian Legislative Council currently in detention and allow all members of the Council to move between Gaza and the West Bank so that it may resume functioning;

(g) The Mission recommends that the Government of Israel should cease actions aimed at limiting the expression of criticism by civil society and members of the public concerning Israel's policies and conduct during the military operations in the Gaza Strip. The Mission also recommends that Israel should set up an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory, in terms of both charges and detention pending trial. The results of the inquiry should be made public and, subject to the findings, appropriate remedial action should be taken;

(h) The Mission recommends that the Government of Israel should refrain from any action of reprisal against Palestinian and Israeli individuals and organizations that have cooperated with the United Nations Fact Finding Mission on the Gaza Conflict, in particular individuals who have appeared at the public hearings held by the Mission in Gaza and Geneva and expressed criticism of actions by Israel;

(i) The Mission recommends that Israel should reiterate its commitment to respecting the inviolability of United Nations premises and personnel and that it should undertake all appropriate measures to ensure that there is no repetition of violations in the future. It further recommends that reparation to the United Nations should be provided fully and without further delay by Israel, and that the General Assembly should consider this matter.

1973. **To Palestinian armed groups,**

(a) The Mission recommends that Palestinian armed groups should undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects, and take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities;

(b) The Mission recommends that Palestinian armed groups who hold Israeli soldier Gilad Shalit in detention should release him on humanitarian grounds. Pending such release they should recognize his status as prisoner of war, treat him as such, and allow him ICRC visits.

1974. **To responsible Palestinian authorities,**

(a) The Mission recommends that the Palestinian Authority should issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigation of all allegations of serious human rights violations by security forces under its control, and end resort to military justice to deal with cases involving civilians;

(b) The Mission recommends that the Palestinian Authority and the Gaza authorities should release without delay all political detainees currently in their power and refrain from further arrests on political grounds and in violation of international human rights law;

(c) The Mission recommends that the Palestinian Authority and the Gaza authorities should continue to enable the free and independent operation of Palestinian non-governmental organizations, including human rights organizations, and of the Independent Commission for Human Rights.

1975. **To the international community,**

(a) The Mission recommends that the States parties to the Geneva Conventions of 1949 should start criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Geneva Conventions of 1949. Where so warranted following investigation, alleged perpetrators should be arrested and prosecuted in accordance with internationally recognized standards of justice;

(b) International aid providers should step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population;

(c) In view of their crucial function, the Mission recommends that donor countries/assistance providers should continue to support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law, and advising relevant authorities on their compliance with international law;

(d) The Mission recommends that States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, should ensure that respect for the rule of law, international law and human rights assumes a central role in internationally sponsored peace initiatives;

(e) In view of the allegations and reports about long-term environmental damage that may have been created by certain munitions or debris from munitions, the Mission recommends that a programme of environmental monitoring should take place under the auspices of the United Nations, for as long as deemed necessary. The programme should include the Gaza Strip and areas within southern Israel close to impact sites. The environmental monitoring programme should be in accordance with the recommendations of an independent body, and samples and analyses should be analysed by one or more independent expert institutions. Such recommendations, at least at the outset, should include measurement mechanisms which address the fears of the population of Gaza and southern Israel at this time and should at a minimum be in a position to determine the presences of heavy metals of all varieties, white phosphorous, tungsten micro-shrapnel and granules and such other chemicals as may be revealed by the investigation.

1976. **To the international community and responsible Palestinian authorities,**

(a) The Mission recommends that appropriate mechanisms should be established to ensure that the funds pledged by international donors for reconstruction activities in the Gaza Strip are smoothly and efficiently disbursed, and urgently put to use for the benefit of the population of Gaza;

(b) In view of the consequences of the military operations, the Mission recommends that responsible Palestinian authorities as well as international aid providers should pay special attention to the needs of persons with disabilities. In addition, the Mission recommends that medical follow-up should be ensured by relevant international and Palestinian structures with regard to patients who suffered amputations or were otherwise injured by munitions, the nature of which has not been clarified, in order to monitor any possible long-term impact on their health. Financial and technical assistance should be provided to ensure adequate medical follow-up to Palestinian patients.

1977. **To the international community, Israel and Palestinian authorities,**

(a) The Mission recommends that Israel and representatives of the Palestinian people, and international actors involved in the peace process, should involve Israeli and

Palestinian civil society in devising sustainable peace agreements based on respect for international law. The participation of women should be ensured in accordance with Security Council resolution 1325 (2000);

(b) The Mission recommends that attention should be given to the position of women and steps be taken to ensure their access to compensation, legal assistance and economic security.

1978. **To the United Nations Secretary-General, the Mission recommends that the Secretary-General should develop a policy to integrate human rights in peace initiatives in which the United Nations is involved, especially the Quartet, and request the United Nations High Commissioner for Human Rights to provide the expertise required to implement this recommendation.**

1979. **To the Office of the United Nations High Commissioner for Human Rights.**

(a) The Mission recommends that the Office of the United Nations High Commissioner for Human Rights should monitor the situation of persons who have cooperated with the United Nations Fact Finding Mission on the Gaza Conflict and periodically update the Human Rights Council through its public reports and in other ways as it may deem appropriate;

(b) The Mission recommends that the Office of the High Commissioner for Human Rights should give attention to the Mission's recommendations in its periodic reporting on the Occupied Palestinian Territory to the Human Rights Council.

Annex I

List of meetings held by the United Nations Fact Finding Mission on the Gaza Conflict

Diplomatic Missions

- Diplomatic Community in the Gaza Strip, West Bank and East Jerusalem[1205]
- Permanent Mission of the Arab Republic of Egypt to the United Nations in Geneva, chair of the African Group
- Permanent Mission of France to the United Nations in Geneva
- Permanent Mission of the Islamic Republic of Pakistan to the United Nations in Geneva, chair of the Organisation of the Islamic Conference Group
- Permanent Mission of the Kingdom of Great Britain and Northern Ireland to the United Nations in Geneva
- Permanent Observer Mission of Palestine to the United Nations in Geneva
- Permanent Mission of the Republic of Cuba to the United Nations in Geneva, chair of the Non-aligned Movement Group
- Permanent Mission of the Republic of Yemen to the United Nations in Geneva, chair of the Arab Group
- Permanent Mission of the Russian Federation to the United Nations in Geneva
- Permanent Mission of Sweden to the United Nations in Geneva
- Permanent Mission of Switzerland to the United Nations in Geneva
- Permanent Mission of the United States of America to the United Nations in Geneva

Domestic authorities

- Palestinian Authority, Minister of Health
- Palestinian Authority, Negotiation Support Unit
- Members of the Palestinian Legislative Council (PLC)
- Gaza authorities

United Nations and International Organizations

- International Committee of the Red Cross

[1205] Australia, Austria, Belgium, Canada, Chile, Egypt, Germany, Ireland, Italy, Netherlands, Norway, Poland, Spain, Sweden, Switzerland and United Kingdom.

- League of Arab States Gaza Fact Finding Mission
- United Nations High Commissioner for Human Rights
- Office of the High Commissioner for Human Rights (OHCHR), Director, Field Operations and Technical Cooperation Division
- Office of the High Commissioner for Human Rights (OHCHR), Middle East and North Africa Unit
- Office of the High Commissioner for Human Rights (OHCHR), OPT
- Office of the High Commissioner for Human Rights (OHCHR), New York Office
- United Nations Special Coordinator for the Middle East Peace Process and UNSCO staff
- United Nations Country Team in the Gaza Strip[1206]
- United Nations Department of Safety and Security (UNDSS)
- United Nations Development Programme (UNDP)
- United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009, Head
- United Nations Human Rights Council, President
- United Nations Institute for Training and Research (UNITAR) Operational Satellite Applications Programme (UNOSAT)
- United Nations Secretary General
- United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967
- United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Commissioner General
- United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Director Gaza Operations
- United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Field Legal Office, Gaza
- Special Representative of the United Nations' Secretary General on Children in Armed Conflict
- World Health Organization (WHO)

Non-governmental organizations

- Town hall meeting with Geneva based NGOs[1207]

[1206] FAO, OCHA, OHCHR, UNDP, UNESCO, UNFPA, UNICEF, UNIFEM, UNSCO, UNOPS, UNRWA, WHO and WFP.

- AlAtaa Charitable Association
- Al-Dameer Association for Human Rights
- Adalah, The Legal Centre for Arab Minority Rights in Israel
- Addameer, Prisoners Support and Human Rights Association
- Agricultural Development Association (PARC)
- Al-Haq
- Al-Mezan Center for Human Rights
- Alternative Information Centre
- Amnesty International
- B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories
- Center for Women's Legal Research and Consulting
- Culture and Free Thought Association
- Defense of Children International – Palestine Section (DCI)
- Gaza Mental Health Program (GMHP)
- General Union of Palestinian Women
- Gisha, Legal Center for Freedom of Movement
- Human Rights Watch
- Ma'an Development Center
- Magen David Adom in Israel
- Mandela Institute
- Palestinian Agricultural Development Society
- Palestinian Center for Human Rights (PCHR)
- Palestinian International Campaign to End the Siege on Gaza
- Palestinian Medical Relief Society

[1207] The following NGOs confirmed participation: Al-Hakim Foundation to ONUG, Amnesty International, Arab Commission for Human Rights, Asian Forum for Human Rights and Development, CETIM Centre Europe-tiers monde, Defence for Children International, EAFORD, Genève peoples, Human Rights Watch, ICTJ Geneva and Program on Peace and Justice, International Alliance Women, International Commission of Jurists, International Council of Jewish Women, International Secretariat of the Conference of NGOs, International Service for Human Rights, Istituto Internazionale Maria Ausiliatrice and VIDES, Lawyers' Rights Watch Canada, Mouvement contre le racisme et pour l'amitié entre les peoples, Oxfam International Geneva, Pax Christi International, , The Lutheran World Federation, UN WATCH, WFW, WILPF, Women's International League for Peace and Freedom, World Alliance of YMCAs, WVI, WWSF.

- Palestinian Network of NGOs
- Palestinian Red Crescent Society (PRCS)
- Palestinian Woman Developmental Studies Association
- Palestinian Woman Information and Media Centre
- Physicians for Human Rights – Israel
- Society for Disabled in the Gaza Strip
- Stop the Wall
- Yesh Gvul
- Union of Agricultural Work Committees
- Union of Health Care Committees
- Union of Health Work Committees
- Women's Affairs Centre

National human rights institutions

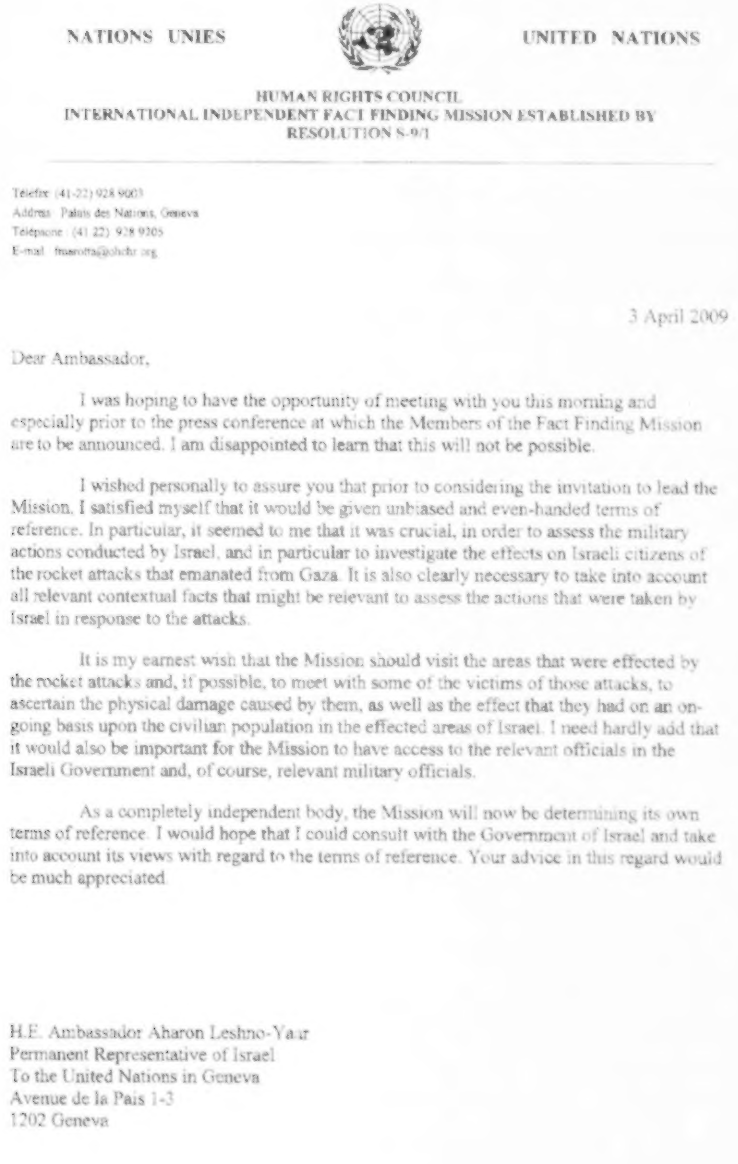
- Palestinian Independent Commission for Human Rights (ICHR)

Other organizations

- General Syndicate of Fishers
- Palestinian Bar Association in Gaza
- Palestinian Businessmen Association
- Palestinian Federation of Industry
- Palestinian Trade Center

Annex II

Correspondence between the United Nations Fact Finding Mission on the Gaza Conflict and the Government of Israel regarding Access and Cooperation



NATIONS UNIES UNITED NATIONS

HUMAN RIGHTS COUNCIL
INTERNATIONAL INDEPENDENT FACT FINDING MISSION ESTABLISHED BY RESOLUTION S-9/1

Téléfax (41-22) 928 9003
Address Palais des Nations, Geneva
Téléphone : (41 22) 928 9205
E-mail fmarotta@ohchr.org

3 April 2009

Dear Ambassador,

I was hoping to have the opportunity of meeting with you this morning and especially prior to the press conference at which the Members of the Fact Finding Mission are to be announced. I am disappointed to learn that this will not be possible.

I wished personally to assure you that prior to considering the invitation to lead the Mission, I satisfied myself that it would be given unbiased and even-handed terms of reference. In particular, it seemed to me that it was crucial, in order to assess the military actions conducted by Israel, and in particular to investigate the effects on Israeli citizens of the rocket attacks that emanated from Gaza. It is also clearly necessary to take into account all relevant contextual facts that might be relevant to assess the actions that were taken by Israel in response to the attacks.

It is my earnest wish that the Mission should visit the areas that were effected by the rocket attacks and, if possible, to meet with some of the victims of those attacks, to ascertain the physical damage caused by them, as well as the effect that they had on an on-going basis upon the civilian population in the effected areas of Israel. I need hardly add that it would also be important for the Mission to have access to the relevant officials in the Israeli Government and, of course, relevant military officials.

As a completely independent body, the Mission will now be determining its own terms of reference. I would hope that I could consult with the Government of Israel and take into account its views with regard to the terms of reference. Your advice in this regard would be much appreciated.

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Pais 1-3
1202 Geneva

I am willing to come to Geneva to meet with you at a mutually convenient time or, if that would be more helpful, to travel to Jerusalem to meet with Israeli Government officials there.

I do hope that you will find it possible to respond to this communication at your earliest convenience.

Please accept, Excellency, the assurances of my highest consideration.

Richard Goldstone
Head of the Fact-Finding Mission
established under HRC resolution S-9/1

Mission permanente d'Israël
auprès de l'Office des Nations Unies
et des Organisations Internationales à Genève

משלחת ישראל
ליד משרד האומות המאוחדות
והארגונים הבינלאומיים בג'נבה

Justice Richard Goldstone
OHCHR
Palais des Nations
1211 Geneva 10
Fax 022 928 9003

Geneva, 7 April 2009

Dear Justice Goldstone,

Thank you for your letter dated April 3, 2009, concerning the HRC Fact-Finding Mission.

It is with regret that I have to inform you that Israel will not be able to cooperate with the proposed Fact-Finding Mission. While I appreciate your efforts to obtain assurances that the Mission would be unbiased and even-handed, it remains the fact that the legal basis of the mission is HRC Resolution S-9/1. This grossly politicized resolution prejudges the issue at hand, determining at the outset that Israel has perpetrated grave violations of human rights and implying that Israel has deliberately targeted civilians and medical facilities, and systematically destroyed the cultural heritage of the Palestinian people. It calls for urgent international action directed only against Israel and, as regards the proposed Fact-Finding Mission, makes clear that it regards its mandate as exclusively focused on Israeli violations of human rights and humanitarian law. The fact that several distinguished individuals approached to head the Mission declined reflects the problematic nature of the Mission and its mandate.

The hopelessly one-sided nature of the HRC resolution was reflected in the Explanations of Vote of numerous states, including the European Union - which stated that it found the mandate of the proposed Mission to be unbalanced, and noted that investigations were currently being conducted under the leadership of the UN Secretary-General, as well as by Israel. Indeed, as you may be aware, Israel is engaged in a series of far-reaching investigations regarding many aspects of the "Cast Lead" Operation, and has cooperated intensively with the UN Secretary-General's Board of Inquiry.

I have no doubts regarding your genuine desire to ensure that the proposed HRC Mission would be balanced, but am concerned that neither your own commitment to ensure impartiality nor any assurance given to you by any individual have the force to change its legal basis.. Even if the Mission were to choose to operate in accordance with its own terms of reference, resolution S-9/1 would still provide the basis for the Council's treatment of the Mission's report and any subsequent proceedings.

...2/

I wish to stress that Israel's decision in this matter is not intended in any way to reflect on its sincere respect for you personally, or on your longstanding commitment to ensuring respect for the rights and welfare of Israelis and Palestinians alike. Rather it derives solely from a reluctant recognition of the politicization that has so deeply infected the Human Rights Council.

With sincere best wishes,

Aharon Leshno Yaar
Ambassador
Permanent Representative

NATIONS UNIES UNITED NATIONS

HUMAN RIGHTS COUNCIL
INTERNATIONAL INDEPENDENT FACT FINDING MISSION

Telefax: (41 22) 928 9001
Address: Palais des Nations, Geneva
Telephone: (41 22) 928 9205
E-mail: ffmgaza@ohchr.org

8 April 2009

Dear Ambassador,

I wish to thank you for your letter of 7 April, 2009. I have taken note of the arguments put forward in the letter on the basis of which your Government is of the view that it is prevented from cooperating with the Fact Finding Mission that I have been designated to lead. In this respect, I would like to point out that the Mission has been requested and established by the President of the UN HRC to "investigate all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after." As such, the scope of the Mission's investigation is not the result of its own deliberations or personal convictions, however legitimate or authoritative. It is a clear mandate, legally and formally given to it.

As I mentioned in my previous letter, the Fact Finding Mission will be guided by its mandate, and conduct its work independently and impartially. I also respectfully submit that it would be in the interest of the Government of Israel and of Israeli victims to cooperate with the Mission so that its and their views, concerns and submissions could receive appropriate attention and consideration and be reflected in the outcome of the Mission's work.

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Paix 1-3
1202 Geneva

I would greatly appreciate it if this letter could be brought to the attention of your Government, and your Government's position reconsidered in light of the above clarifications.

I remain available for any further discussions and meetings with you or other Government representatives as may be appropriate.

Please accept, Excellency, the assurances of my highest consideration.

Richard Goldstone
Head of the International Independent
Fact-Finding Mission

cc: H.E. Ambassador Martin Ihoeghian Uhomoibhi
President of the Human Rights Council

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UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT
Fax: (41 22) [illegible], Telephone: (41 22) [illegible], E-mail: [illegible]

GFFM O-10/090429RG

29 April 2009

Dear Ambassador,

I am writing to you in my capacity as Head of the United Nations Fact-finding Mission established by the President of the Human Rights Council, Ambassador Martin Ihoeghian Uhomoibhi, to investigate all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after. As you are aware, Professor Christine Chinkin, Ms. Hina Jilani, and Colonel (retired) Desmond Travers are the other Members of the Mission.

The Fact Finding Mission will convene in Geneva during the first week of May to start its work. We would appreciate the opportunity of meeting with you to discuss any issue of relevance to the implementation of the Mission's mandate. We also look forward to discussing the contents of our previous correspondence on this issue.

Should this be convenient to you, I would like to propose Tuesday 5 May at 9:00 AM.

Please accept, Your Excellency, the assurances of my highest consideration.

Richard Goldstone

Richard Goldstone
Head of the United Nations
Fact-Finding Mission on the Gaza Conflict

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Paix 1-3
1202 Geneva

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UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT
Fax: (41-22) 928 9003, Telephone: (41 22) 928 9205, E-mail: lmarotta@ohchr.org

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GFFM/O-23/090429FM

The Secretariat of the United Nations Fact Finding Mission on the Gaza Conflict presents its compliments to the Permanent Mission of Israel and has the honour to forward herewith a letter from the Head of the United Nations Fact Finding Mission on the Gaza Conflict, Justice Richard Goldstone addressed to His Excellency, Mr. Benjamin Netanyahu, Prime Minister of the Government of Israel.

The Secretariat of the United Nations Fact Finding Mission on the Gaza Conflict should be grateful if the Permanent Mission could transmit the attached letter to His Excellency, the Prime Minister.

Geneva, 5 May 2009

Permanent Mission of Israël
Avenue de la Paix 1-3
1202 Geneva

page 442

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UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT
Fax: (41-22) 928 9003, Telephone: (41 22) 928 9205, E-mail: fmarotta@ohchr.org

GFFM/O-22/090429RG

4 May 2009

Dear Mr. Prime Minister,

I am writing to you in my capacity as Head of the United Nations Fact-finding Mission on the Gaza conflict appointed on 3 April 2009 by the President of the Human Rights Council, Ambassador Martin Ihoeghian Uhomoibhi. Professor Christine Chinkin, Ms. Hina Jilani, and Colonel (retired) Desmond Travers are the other Members of the Mission.

The Fact Finding Mission is mandated to investigate all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after. The Mission will conduct its work independently and impartially.

Since the official announcement of its establishment, the Mission has received numerous attestations of support by international scholars and legal practitioners, academic and professional institutions, international and domestic human rights and civil society organisations - including Israeli and Palestinian organisations – as well as member states of the United Nations.

I am writing to seek your Government's cooperation in the implementation of the Mission's mandate, including by providing access to Israel, the Gaza Strip, the West Bank including East Jerusalem to enable the Mission to meet with victims of alleged violations and relevant authorities, including military officials, and access to documentation relevant to our inquiry.

I believe that it is crucial, in order to assess the military actions conducted by Israel, including the investigation of the effects on Israeli citizens of the rocket attacks that emanated from Gaza, that the Mission should visits the areas that were effected by those attacks. It is the earnest wish of the Mission to meet, if possible, with some of the victims of the rocket attacks, to ascertain the physical damage, as well as the effect that they had on an on-going basis upon the civilian population in the effected areas of Israel.

I also respectfully submit that it would be in the interest of the Government of Israel and of Israeli victims to cooperate with the Mission so that its and their views, concerns and submissions could receive appropriate attention and consideration and be reflected in the outcome of the Mission's work.

His Excellency Benjamin Netanyahu
Prime Minister
Jerusalem, Israel

We would also respectfully seek an opportunity to meet with you and with other relevant members of your Government.

I look forward to hearing from you and your support for the implementation of our tasks.

Please accept, Mr. Prime Minister, the assurances of my highest consideration.

Richard Goldstone
Head of the United Nations
Fact-Finding Mission on
the Gaza Conflict

cc H.E. Ambassador Aharon Leshno-Yaar Permanent Representative of Israel to the United Nations in Geneva
H.E. Ambassador Martin I. Uhomoibhi, President of the Human Rights Council
Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights
Prof Christine Chinkin, United Nations Fact-finding Mission on the Gaza Conflict
Ms. Hina Jilani, United Nations Fact-finding Mission on the Gaza Conflict
Col (retired) Desmond Travers, United Nations Fact-finding Mission on the Gaza Conflict

NATIONS UNIES UNITED NATIONS

UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT
Fax: [illegible], Telephone: [illegible], E-mail: [illegible]

GFFM/O-33/090520RG

Geneva, 20 May 2009

Dear Ambassador,

I refer to our previous correspondence with regard to the United Nations Fact Finding Mission on the Gaza Conflict, that was established by the President of the Human Rights Council, Ambassador Martin Ihoeghian Uhomoibhi, and that I am heading. As you are aware, the Mission is mandated to investigate all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.

In my letters of 3 and 8 April 2009 addressed to you, and in my letter of 4 May 2009 addressed to Prime Minister Netanyahu, I requested the cooperation of the Government of Israel in the implementation of the Mission's mandate, including by providing access to Israel, the Gaza Strip and the West Bank, including East Jerusalem, to enable the Mission to meet with victims of alleged violations and relevant authorities. I also requested access to documentation relevant to our inquiry.

To date, I have received no reply to my request. I had hoped to be able to discuss this issue during the first meeting of the Fact Finding Mission in Geneva in early May, however my letter of 29 April 2009 inviting you to meet with the Mission Members went unanswered.

The Mission is required to submit its report by early August, and is thus working under a very tight timeline. In order to accomplish our task within the expected deadline, we are planning to complete field investigations by end June. Accordingly, we need to proceed expeditiously in the implementation of the various phases of our work.

In view of the lack of answers to my various communications, and in order to be able to fulfil the mandate entrusted to the Fact Finding Mission, I have sought the assistance of the Government of Egypt to facilitate entry into Gaza through the Rafah crossing.

I would like to reiterate that the Mission's preferred option would be to carry out field investigations in Israel, the West Bank and Gaza. We are also planning to hold public hearings of victims of alleged violations and experts and would like to hold those on-site. Should this not be possible due to a refusal of the Government of Israel to cooperate, or even to provide access to its territory, the West Bank and Gaza, we will however proceed with alternative arrangements. These will include arranging for meetings with victims from Israel and the West Bank and for public hearings outside Israel and the Occupied Palestinian Territory.

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Paix 1-3
1202 Geneva

I would appreciate receiving a reply to my request by Friday 21st May, failing which the Mission will proceed with alternative arrangements.

I would like to underline again that the Mission would very much regret not to be able to meet with victims of alleged violations and visit relevant sites as we firmly believe that it would be in the interest of Israeli and Palestinian victims alike for us to be able to do so.

Please accept, Your Excellency, the assurances of my highest consideration.

Richard Goldstone
Head of the United Nations
Fact-Finding Mission on the Gaza Conflict

cc: H.E. Ambassador Martin I. Uhomoibhi, President of the Human Rights Council
Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights
Prof Christine Chinkin, United Nations Fact-finding Mission on the Gaza Conflict
Ms. Hina Jilani, United Nations Fact-finding Mission on the Gaza Conflict
Col (retired) Desmond Travers, United Nations Fact-finding Mission on the Gaza Conflict

Mission permanente d'Israël
auprès de l'Office des Nations Unies
et des Organisations Internationales à Genève

משלחת ישראל
ליד משרד האומות המאוחדות
והארגונים הבינלאומיים בג'נבה

Justice Richard Goldstone
Head of the UN Fact-Finding Mission
On the Gaza Conflict
OHCHR
Palais des Nations
1211 Geneva 10

Geneva, 2 July 2009

Dear Justice Goldstone,

Thank you for your letter dated 20 May 2009. I have been asked in this response to respond also to your letter dated 4 May 2009 to Prime Minister Netanyahu.

I regret your impression that you have received no reply to your request for cooperation with the proposed Mission. I reiterate the official response to your request contained in my previous letter to you, dated 7 April 2007, that regrettably Israel will not be able to cooperate with the proposed Mission.

I also reiterate that this decision does not reflect in any way on you personally or the regard with which you are held in Israel. It is simply a recognition that the legal basis of the proposed mission is HRC Resolution S-9/1. This resolution, beyond its inflammatory and prejudicial language, clearly provides that the mandate of the Mission is limited to investigating "violations" by "the occupying Power, Israel against the Palestinian people" (OP14).

You will understand Israel's reluctance to cooperate with or give legitimacy to a Mission mandated to investigate the lawful use of force by a State to protect its citizens, yet required to ignore the illegal use of force by terrorist groups which made such action necessary.

Indeed it was this prejudicial and one-sided mandate which prompted many States, including the European Union, Canada, Japan and Switzerland, to refuse to support the Resolution and which led a distinguished list of human rights experts to decline the invitation to head the proposed Mission. As Mary Robinson, former High Commissioner for Human Rights, stated in explaining her refusal to serve as Head of the Mission:

"I am afraid the resolution is not balanced because it focuses on what Israel did, without calling for an investigation on the launch of the rockets by Hamas. This is unfortunately a practice by the Council: adopting resolutions guided not by human rights but by politics. This is very regrettable." (*Le Temps*, 4 February 2009).

I note your assurances that the mandate of the Mission as expressed to you by the President of the Council is not as set out in the Council Resolution. I note also that you yourself have distanced yourself from this text. (In our correspondence you have ceased signing your letters as Head of the "Fact-finding Mission ***established under HRC Resolution S-9/1***" and now use the term "International Independent Fact Finding Mission" or United Nations Fact Finding Mission on the Gaza Conflict" - though the term "Gaza Conflict" would itself seem to exclude the relevance of attacks on Southern Israel.)

However, as a matter of law, no statement by any individual, including the President of the Council, has the force to change the mandate of the Mission. Moreover, even subsequent to his supposed clarifications, in a press conference on 16 April 2009, Ambassador Uhomoibhi stated clearly that it is operative paragraph 14 of Resolution S-9/1 which "spells out the mandate".

This accords with the provisions of the UN General Assembly's Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/RES/46/59) which provides that: "The decision by the competent United Nations organ to undertake fact-finding ***should always contain a clear mandate for the fact-finding Mission***" (para. 17, emphasis added). And indeed Resolution S-9/1 does contain a clear mandate, albeit one which is hard to reconcile with the Declaration on Fact-finding's requirement that "Fact-finding should be comprehensive, objective, impartial and timely" (para.3).

I also note that, even should the Mission choose to operate in accordance with terms of reference which it has devised for itself, the Council's treatment of its report and any subsequent proceedings would still be based on the terms of Resolution S-9/1. And indeed there is nothing in the practice of the Council as it relates to Israel to date, that suggests it would not continue with its wholly one-sided approach.

Israel's decision not to cooperate with the Mission is, I should emphasize, without prejudice to its conviction that any allegations of wrongdoing by Israeli forces in the course of the conflict must be investigated, and where appropriate, prosecuted. It is for this reason that the IDF initiated a series of far-reaching command investigations into a wide range of incidents and operational aspects of the conflict. In the past such investigations have led to criminal prosecutions. The findings are currently being examined by the Military Advocate General, and will also be examined by the Attorney General. Both the decisions of the Military Advocate General and of the Attorney General can be appealed – by Israelis or Palestinians alike – to the Supreme Court sitting as the High Court of Justice.

Israel's decision was prompted purely by the legal basis of the Mission and its mandate, and without regard to the personalities involved. (In passing, however, I am obliged to register serious concern that one member of the Mission was signatory during the conflict to a public letter which made a number of clearly political and prejudgmental assertions, including that "the rocket attacks on Israel by Hamas do not amount to an armed attack entitling Israel to rely on self-defence(!)" [*Sunday Times Letters Page*, 11, January 2009]).

Some aspects of the conduct of the Mission have, in Israel's view, supported its decision not to cooperate with this initiative. Reports that the members of the Mission were accompanied at every stage of their visit to Gaza by Hamas officials gives serious reason to doubt that any true picture of the situation in Gaza, and especially of the cynical abuse of the civilian population by Hamas, can possibly emerge.

Israel is also concerned and confused by the decision to hold public hearings, broadcast on television and internet, as part of the fact-finding process. As you yourself have noted, this procedure is unprecedented as part of fact-finding operations. The very point of a fact-finding mission is that a team of experts bring their experience and judgment to bear in assessing the available evidence and drawing responsible conclusions - not that raw evidence, perhaps of questionable authenticity, is directly broadcast into the public arena. Such a trial by public opinion, which of necessity cannot give any weight to confidential or sensitive information, can serve little purpose in ascertaining the truth, and is only likely to prejudice public opinion in advance of any other conclusions.

I take this opportunity to emphasize once again that Israel's decision should not be interpreted in any way as an aspersion on your own integrity or commitment to impartiality. To the contrary, your involvement prompted Israel to give closer and more considered thought to its response to this initiative and increases our regret that it is not one we can cooperate with or support.

Sincerely,

Aharon Leshno Yaar
Ambassador
Permanent Representative

NATIONS UNIES UNITED NATIONS

UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT
[illegible]

GFFM/O-80/090717RG

17 July 2009

Dear Ambassador Yaar,

Thank you for your letter dated 2 July 2009.

At the outset, I would like to record that the reason for my impression that no final word was given by your Government to my request for its cooperation was the terms of sometimes conflicting statements coming from your Foreign Office and the lack of response to my letters to Prime Minister Netanyahu of 4 May 2009 and to you of 8 April and 20 May 2009.

I had hoped that the terms of the mandate that I received from the President of the Human Rights Council and the absence of objections by the Human Rights Council when informed of this mandate would constitute a reason for Israel to support this opportunity, rather than undermine it. Governments that were unhappy with the terms of Resolution S-9/1 subsequently offered their support to the mandate given to my Mission.

In the light of the decision of your Government not to cooperate, there is little point in my responding to all the issues raised in your letter. I must, however, categorically deny the allegation that Hamas officials accompanied the Members of the Fact Finding Mission at all let alone "at every stage of their visit to Gaza". Reports to that effect are denial of truth, as I have already publicly stated. I would have found this to be quite unacceptable.

I have made public the motivation for holding public hearings. The fact that this kind of hearing is unprecedented is hardly a reason for criticism and it is incorrect to suggest that it is "trial by public opinion". The hearings are no more than an attempt to allow the voices and faces of victims from all sides to be heard and seen by the public and especially in Israel and the occupied Palestinian territory, including Gaza and the West Bank. The facts that might emerge from the hearings are one part of our fact finding activities and will be evaluated in the same way as will all other information obtained by the Mission.

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Paix 1-3
1202 Geneva

Notwithstanding the decision by your Government not to cooperate, we have sent you for onward transmission to your Government a series of questions on issues that concern our Mission, based on information gathered during the course of our work. I would welcome a response from your Government to our letter of 10 July 2009. We are similarly transmitting questions on matters of concern to the Palestinian Authority and to the Gaza authorities.

I am appreciative of your Government's acknowledgement of my personal commitment to impartiality with regard to all aspects of the Mission's work. This commitment is shared by all Members of the Mission and will be fully reflected in our report. It is my hope and assumption that the Human Rights Council will accept it accordingly.

Please accept, Your Excellency, the assurances of my highest consideration.

Richard Goldstone
Head
United Nations Fact Finding Mission on the Gaza Conflict

Annex III

Replies to Mission's Call for Submissions of 8 June 2009[1208]

1) Al Mezan, Gaza
2) Adalah ; ACRI ; Gisha ; HaMoked ; Physicians for Human Rights ; PCATI ; Yesh Din (Joint Submission), Israel
3) Alternative Information Center, Israel
4) Australia Lawyer Group, Australia
5) B'nai B'rith International, United States of America
6) Busby, Chris, United Kingdom
7) Central Committee for Documentation and Pursuit of Israeli War Criminals – *Tawtheq*, Gaza
8) Centre on Housing Rights and Evictions COHRE, Geneva
9) Defence for Children International (DCI) – Palestine, Jerusalem
10) Diakonia – Humanitarian Law, Jerusalem
11) Eyre, Peter (location unknown)
12) Euro-Mediterranean Human Rights Network (EMHRN), Brussels
13) Green, Yvonne, United Kingdom
14) Housing and Land Rights Network – Habitat International Coalition, Egypt
15) Inge Genefke and Bent Sorensen Anti-Torture Support Foundation, Brussels
16) Iranian Islamic Human Rights Commission (IHRC), Tehran
17) Jerusalem Centre for Public Affairs, Jerusalem
18) Lacey, Ian, Australia
19) Leas, James Marc, United States of America
20) Matas, David, Winnipeg
21) National Lawyers Guild, New York
22) National Lawyers Guild, New York
23) NGO Monitor, Jerusalem
24) Ostroff, Maurice (location unknown)
25) Ostroff, Maurice (location unknown)
26) Richter, Elihu, Israel

[1208] The list only includes information formally submitted to the Mission in reply to the Call for Submission of 8 June 2009. The list is not inclusive of other information and material provided to the Mission by organizations and individuals.

27) Richter, Elihu, Israel

28) Shinar, Ofer, Israel

29) Take-a-Pen, Israel

30) The 1612 Working Group on Grave Violations against Children established for Israel and the Occupied Palestinian Territory

31) World Health Organization-West Bank and Gaza, Jerusalem.
